

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM [REDACTED] 1922

No. [REDACTED] 152

GREAT NORTHERN RAILWAY COMPANY, PETITIONER,

vs.

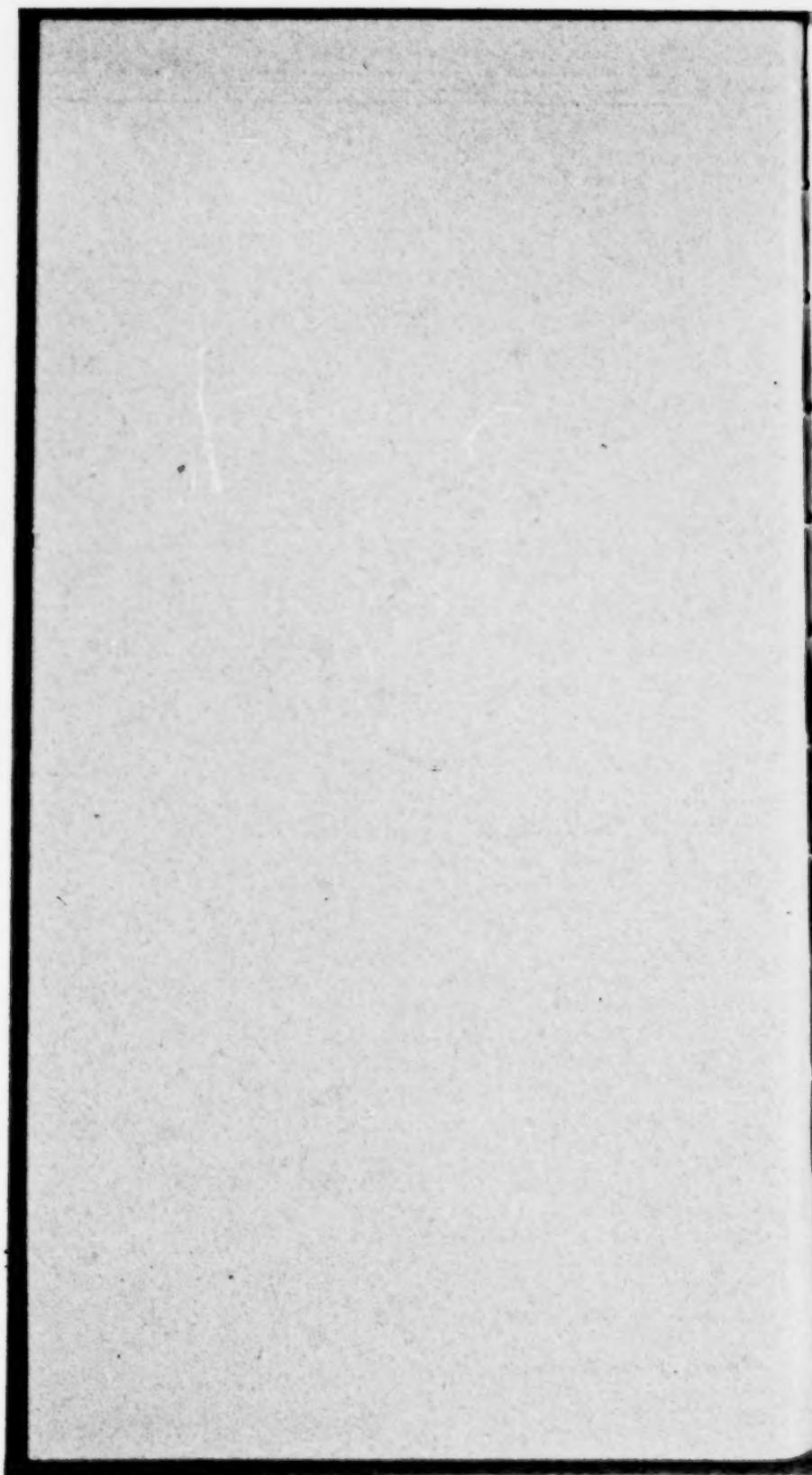
VIVIAN H. STEINKE, PAUL E. STEINKE, SPRINGBROOK
STATE BANK, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF NORTH DAKOTA.

PETITION FOR CERTIORARI FILED AUGUST 17, 1921.

CERTIORARI AND RETURN FILED DECEMBER 5, 1921.

(28,436)



(28,436)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 481.

GREAT NORTHERN RAILWAY COMPANY, PETITIONER,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRINGBROOK
STATE BANK, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA.

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a Supreme Court of the United States, October Term, 1920.

No. —.

GREAT NORTHERN RAILWAY COMPANY, Petitioner,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING BROOK STATE BANK, a Corporation; Henry Graichen, Christie Graichen, Emma L. Schartle, Verlie L. Schartle, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Spring Brook Trading Company, a Corporation; Daniel Jacobson, and Frank M. Craig, Respondents.

CERTIFIED RECORD FROM THE SUPREME COURT OF THE STATE OF NORTH DAKOTA.

I STATE OF NORTH DAKOTA,
County of Williams;

In District Court, 11th Judicial District.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING BROOK STATE BANK, a Corporation; Henry Graichen, Christie Graichen, Emma L. Schartle, Verlie L. Schartle, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Elizabeth Comford, Spring Brook Trading Company, a Corporation; J. L. Kingston, Daniel Jacobson, Frank M. Craig, Nancy, Craig, Charlie F. Bellet, Alice Bellet, Alva Ulrich, and Hattie Ulrich, Defendants.

Summons.

The State of North Dakota to the above named Defendants:

You are hereby summoned to answer the complaint in the above entitled action, a copy of which is hereto attached and herewith served upon you, and to serve a copy of your answer upon the subscribers within thirty days after the service of summons upon you, exclusive of the day of such service; and in case of your failure to appear or answer said complaint, judgment will be taken against you by default for the relief demanded in the complaint.

Dated this 10th day of September, 1918.

MURPHY & TONER,
Attorneys for Plaintiff.

Residence and Post Office Address, Grand Forks, North Dakota.

STATE OF NORTH DAKOTA,
County of Williams:

In District Court, 11th Judicial District.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING BROOK STATE
Bank, a Corporation; Henry Graichen, Christie Graichen, Emma
L. Schartle, Verlie L. Schartle, Everett A. Webster, Martha
Webster, Walter T. Webster, Addie M. Webster, Eli Kingston,
Edna Kingston, Elizabeth Comford, Springbrook Trading Com-
pany, a Corporation; J. L. Kingston, Daniel Jacobson, Frank M.
Craig, Nancy Craig, Charlie F. Bellet, Alice Bellet, Alva Ulrich,
and Hattie Ulrich, Defendants.

Complaint.

For complaint herein Plaintiff alleges:

1.

That it is a corporation, organized, created and existing under the laws of the State of Minnesota and engaged in the business of a common carrier of passengers and freight with lines of railway extending from the city of St. Paul, Minnesota through the State of North Dakota westerly and through the village of Spring Brook, Williams County, North Dakota, to the City of Seattle, State of Washington.

2.

That the defendants Spring Brook State Bank and Spring Brook Trading Company are domestic corporations; that the defendants Vivian H. Steinke and Paul E. Steinke are husband and wife; the defendants Henry Graichen and Christie Graichen are husband and wife; the defendants Emma L. Schartle and Verle L. Schartle are husband and wife; the defendants Everett A. Webster and Martha Webster are husband and wife; the defendants Walter T. Webster and Addie M. Webster are husband and wife, and the defendants Eli Kingston and Edna Kingston are husband and wife. The defendant Elizabeth Comford is a widow; the defendant Daniel Jacobson is a single man; the defendants Frank M. Craig and Nancy Craig are husband and wife; the defendants Charlie F. Bellet and Alice Bellet are husband and wife, and the defendants Alva Ulrich and Hattie Ulrich are husband and wife.

3.

That the plaintiff is the owner of that certain strip or parcel of land located wholly within the northwest quarter of the northeast quarter of section 18, township 155, range 99 located in Williams County, North Dakota parallel with and lying and being within 200 feet of the main track of the railway of the plaintiff railway company as now located and constructed across the northwest quarter of the northeast quarter of section 18 on the southerly side thereof. That the defendant Vivian H. Steinke is the owner of a portion of the unplatte northwest quarter of the northeast quarter of section 18, and is in possession of and trespassing upon a part of the 200 foot strip aforesaid, and that the Spring Brook State Bank is interested therein by virtue of being the holder of a mortgage thereon. That the defendant Henry Grachen is the owner of lots 1 and 2 in Block 1 of East Spring Brook, which lots as platted encroach upon the 200 foot strip aforesaid. That Emma L. Scharle is the owner of lots 17 and 18 block 1, East Spring Brook, which lots as platted encroach upon a part of the 200 strip aforesaid. That the defendants Everett A. Webster and Walter T. Webster are the owners of Lot 14, block 1, which lots as platted encroach upon a part of the 200 foot strip aforesaid; that the defendant Eli Kingston is the owner of lots 15 & 16, block 1, East Spring Brook, which lots as platted encroach upon the 200 foot strip aforesaid. That the Spring Brook State Bank is the owner of lots 1 and 2, block 8, East Spring Brook, N. D. which lots as platted encroach upon said 200 foot strip. That the defendant Elizabeth Comford is the owner of Lot 2, Block 7, East Spring Brook, N. D. which lot as platted encroaches upon said 200 foot strip; that the defendant Spring Brook Trading Company is the owner of lot 3, block 8, East Spring Brook, and which lot as platted encroaches upon said 200 foot strip; that the defendant J. L. Kingston is the owner of a mortgage upon said lots; that the defendant Daniel Jacobson is the owner of Lot 1, Block 7 of East Spring Brook, which lot as platted encroaches upon said 200 foot strip; that the defendant Frank M. Craig is the owner of Lots 3 and 4, Block 7 of East Spring Brook, which lots as platted encroach upon said 200 foot strip; that the defendant Charlie F. Bellet is the owner of Lots 5 and 6 of Block 7, East Spring Brook, which lots as platted encroach upon said 200 foot strip; that the defendant Alva Ulrich claims some interest in Lot 16, Block 1, East Spring Brook, which lot as platted encroaches upon said 200 foot strip.

4.

That the defendants and each of them claim certain estates or interest or liens or encumbrances upon the property hereinbefore described adverse to the plaintiff, and that said defendants named as owners are now occupying and using certain portions of said real estate to the exclusion and damage of the plaintiff, all of which

claims of the defendants and use and occupation are invalid and unlawful.

Wherefore plaintiff demands judgment that the defendants be required to set forth all their adverse claims to the property above described, and that the validity, superiority and priority thereof be determined; that the claims of the defendants be adjudged null and void, and that they be decreed to have no estate or interest in, or lien or encumbrance upon said property; that the plaintiff's title be quieted as to such claims, and that the defendants be forever debarred and enjoined from further asserting the same. That plaintiff recover possession of the premises herein described and recover of said defendants the value of the use and occupation thereof, and that plaintiff have such other and further relief as may be proper together with the costs and disbursements of this action.

Dated Grand Forks, N. D. this 10th, day of September, 1918.

MURPHY & TONER,
Attorneys for Plaintiff.

(Duly verified.)

[Endorsed:] Filed Office Clerk District Court Williams County, N. D., Sept. 10, 1918.

5 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District,

GREAT NORTHERN RAILWAY COMPANY, Plaintiff,
vs.

VIVIAN H. STEINKE et al., Defendants.

STATE OF NORTH DAKOTA,
County of Williams, ss:

I, C. C. Mackenroth, Sheriff of Williams County, North Dakota, do hereby certify and return that the attached Summons & Complaint came into my hands for service on the 11th, day of September, A. D. 1918, and that I did on the 11th, day of September, A. D. 1918, serve the same upon the within named Daniel Jacobson, at Williston, Williams County, North Dakota, by then and there personally delivering to him a true and complete copy of said Summons and said Complaint.

C. C. MACHEKROTH,
Sheriff of Williams County, N. D.

Sheriff's Fees:

Service	\$1.00
Copies50
Mileage	Miles
Livery	Miles
Total	\$1.50

[Endorsed:] Filed Sept. 19, 1918.

6 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Plaintiff,
vs.

VIVIAN H. STEINKE, et al., Defendants.

Sheriff's Return.

STATE OF NORTH DAKOTA,
County of Williams, ss:

I, C. C. Mackenroth, Sheriff in and for Williams County, North Dakota do hereby certify and return that the attached Summons & Complaint came into my hands for service on the 11th day of September A. D. 1918 and that I did on the 11th day of September A. D. 1918 in Williams County, North Dakota serve the attached Summons & Complaint upon Vivian H. Steinke, Paul E. Steinke, Henry Graichen, Christie Crachen, Emma L. Schartle, Verlie L. Schartle, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Frank M. Craig and Nancy Craig by then and there personally delivering to and leaving with each of the foregoing defendants a true and complete copy of said Summons and said Complaint.

I further certify and return that I did on the 11th day of September A. D. 1918 serve the attached Summons & Complaint upon the Springbrook State Bank, a corporation, by personally delivering to and leaving with Jacob Widman, said Corporation's Cashier, a true and complete copy of said Summons and said Complaint at Springbrook, Williams County, North Dakota.

I further certify and return that I did on the 11th day of September A. D. 1918 serve the attached Summons & Complaint upon the said Springbrook Trading Company, a corporation, by personally delivering to and leaving with Jacob Widman, said Corporation's Secretary & Treasurer, a true and complete copy of said Summons & said Complaint at Springbrook, Williams County, North Dakota.

I further certify and return that I have made diligent search and inquiry for the defendants Everett A. Webster, Martha Webster, Charlie F. Bellet, Alice Bellet, Alva Ulrich and Hattie Ulrich, upon whom to make legal service or said Summons & Complaint; but after such search and inquiry as is *by* required by law, I have been unable to find any of said defendants in Williams County, North Dakota, upon whom to make service thereof.

I further certify that the defendant J. L. Kingston is dead.

I further certify that my fees, mileage & Livery in the above entitled action for the services aforesaid, are as follows:

Service & Return.....	\$14.20
Copies	7.00
Mileage.....	5.50
Livery	7.50
 Total	 \$34.20

Dated at Williston, Williams County, North Dakota this 13th day of September A. D. 1918.

C. C. MACKENROTH,
*Sheriff in and for Williams
County, North Dakota,*
By DANIEL JACOBSON,
Deputy.

[Endorsed:] Filed Sept. 19, 1918.

6a STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

VIVIAN STEINKE, ELIZABETH COMFORD, et al., Defendants.

Earl Walter being duly sworn on oath states: That he is a citizen of United States, a resident of Mountrail County North Dakota and over the age of 21 years. That on the 1st day of October 1918 at White Earth N. D. within the limits of Mountrail County, North Dakota he did serve upon Elizabeth Comford, one of the defendants herein, by leaving with her true and correct copies thereof, the summons and complaint in the above entitled action. That the person so served was the person to be served and one of the defendants herein. That he has no interests in said action.

EARL WALTER.

Subscribed and sworn to before me this 2nd day of Oct. 1918.

[SEAL.]

C. E. SHEPARD,
Notary Public, Mountrail Co., N. D.

My commission expires April 21st, 1921.

Fees Service and return.....	\$1.50
Notary25
Total	\$1.75

6b **STATE OF NORTH DAKOTA,**
County of Williams, ss:

In District Court, Eleventh Judicial District.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff,
 vs.

VIVIAN H. STEINKE, ALVA ULRICH, and HATTIE ULRICH, et al.,
 Defendants.

STATE OF MONTANA,
County of Flathead, ss:

G. M. Moffringh, being first duly sworn on oath deposes and says that he is a citizen of the United States over the age of 21 years and not a party to or interested in the above entitled action. That at and in Flathead County, Montana on the 18th day of October 1918 he served the summons and complaint in the above entitled action which are hereto attached on Alva Ulrich and Hattie Ulrich, and each of them, by then and there handing to and leaving with said Alva Ulrich and Hattie Ulrich and each of them personally true and correct copies of said summons and complaint. That at the time of such service affiant knew the said defendants Alva Ulrich and Hattie Ulrich above named and knew the persons served to be the persons intended to be served, and the defendants above named.

G. M. MOFFRINGH.

Subscribed and sworn to before me this 18 day of October 1918.

[SEAL.]

A. J. CASEY,
Notary Public, Montana.

Notary Public in and for the State of Montana, Residing at Somers.

My Commission Expires June 19th, 1921.

6e **STATE OF NORTH DAKOTA,**
County of Williams;

In District Court, Eleventh Judicial District.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff,

v.

VIVIAN H. STEINKE, EVERETT A. WEBSTER, MARTHA WEBSTER,
et al., Defendants.

STATE OF MINNESOTA,
County of Polk, ss;

J. O. Hill being first duly sworn deposes and says that he is a citizen of the United States over the age of 21 years and not a party to or otherwise interested in the above entitled action. That within Polk County, Minnesota on the 23 day of October, 1918, he served the summons and complaint in the above entitled action, which are hereto attached on Everett A. Webster and Martha Webster, and each of them, by then and there handing to and leaving with both said Everett A. Webster and Martha Webster personally true and correct copies thereof. That at the time of such service, affiant knew the persons served to be the persons intended to be served, and two of the defendants in the above entitled action.

J. O. HILL.

Subscribed and sworn to before me this 23 day of October, 1918.

[SEAL.]

C. W. BERG,

Notary Public, Minnesota.

My Commission Expires July 16, 1923.

STATE OF NORTH DAKOTA,
County of Williams, ss;

John A. Corbett, of said County and State, being first duly sworn, on oath says: That he is the publisher of the Williston Graphic, a weekly newspaper of general circulation, printed and published at Williston, in said County and State, and has been during the time hereinafter mentioned and that the advertisement of summons, a printed copy of which is hereby annexed, was printed and published in every copy of each issue of said newspaper for a period of six consecutive weeks, to-wit:

April 3, 1919, April 24, 1919.

April 10, 1919, May 1, 1919.

April 17, 1919, May 8, 1919.

JOHN A. CORBETT.

Subscribed and sworn to before me this 9th day of May A. D. 1919.

A. BROGGER,

Notary Public, Williams County, N. D.

My commission expires Nov. 14, 1924.

Publication Fees, \$13.77.

42-61.

Summons.

STATE OF NORTH DAKOTA,

County of Williams, ss:

In District Court, 11th Judicial District,

GREAT NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING BROOK STATE BANK, a Corporation; Henry Graichen, Christie Graichen, Emma L. Schartle, Verlie L. Shartle, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Elizabeth Comford, Springbrook Trading Company, a Corporation; J. L. Kingston, Daniel Jacobson, Frank M. Craig, Nancy Craig, Charlie F. Bellet, Alice Bellet, Alva Ulrich and Hattie Ulrich, Defendants.

Summons.

The State of North Dakota to the above named defendants:

You are hereby summoned to answer the complaint in the above entitled action, a copy of which is hereto attached and herewith served upon you, and to serve a copy of your answer upon the subscribers within thirty days after the service of summons upon you, exclusive of the day of such service; and in case of your failure to appear or answer said complaint, judgment will be taken against you by default for the relief demanded in the complaint.

Dated the 10th day of September, 1918.

MURPHY & TONER,

Attorneys for Plaintiff.

Residence and Postoffice Address, Grand Forks, North Dakota.

Notice.

To the above named Defendants:

You will please take notice that the verified complaint in the above entitled action is on file in the office of the Clerk of the District Court in and for Williams County, North Dakota at Williston, North Dakota.

MURPHY & TONER,

Attorneys for Plaintiff.

8 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Amended Separate Answer.

Comes now said Defendant The Spring Brook State Bank, the Defendant Spring Brook Trading Company, and defendant Frank M. Craig, and each of them, and for separate answer herein respectfully state and allege:

I.

That save and except as hereinafter in this answer admitted said defendants and each of them deny each and every allegation, matter and thing stated in said complaint.

II.

That they admit the allegations of paragraph one of said complaint; admit that said Bank and Trading Company are domestic corporations; that said defendant Bank is the owner of Lots 1 and 2 Block 8 East Spring Brook, North Dakota; that said defendant Trading Company is the owner of Lot 3 Block 8 East Spring Brook, North Dakota; that defendant Craig is the owner of Lots 3 and 4 Block 7 East Spring Brook; and that each of these said defendants claim an estate and interest in the said lots respectively above described adverse to the plaintiff and that these said defendants are occupying and using the said lots above described respectively and all thereof.

III.

That these defendants and each of them deny that said plaintiff ever had any estate, interest, lien or incumbrance whatever in or to the said lots and premises above described.

That the said defendant Spring Brook State Bank is and ever since July 15, 1913 has been the owner in fee simple of Lots 1 and 2 Block 8 East Spring Brook, North Dakota; that the origin, nature, 9 and extent of its said title thereto is that one Philander Pollock some time prior to the year 1900 established his residence on the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Section 18 Township 155 North of Range 99 West, under the United States Homestead and pre-emption laws, and thereafter at all times so maintained his said residence thereon until he, said Philander Pollock, on February 28th, 1903 received from the United States a patent conveying all the said N. W. $\frac{1}{4}$ or N. E. $\frac{1}{4}$ aforesaid unto him, said Philander Pollock; that on July 9, 1903 he, said Philander Pollock, duly made executed and filed in the office of the Register of Deeds in and for Williams

County, North Dakota, a plat duly certified of East Spring Brook, North Dakota covering part of the said N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ aforesaid, and embracing therein all of the said lots hereinbefore described; that by mesne conveyances from said Philander Pollock said patentee said Lots 1 and 2 of Block 8 aforesaid was conveyed to the Meyers Lumber Company, a corporation; and on July 15, 1913 said Meyers Lumber Company, in consideration of \$600 then paid, made and executed and delivered unto said defendant Bank a good and sufficient deed conveying said Lots 1 and 2 of Block 8 aforesaid unto said defendant Bank which said deed on the 4th day of August 1913 was filed for record in the office of the Register of Deeds in and for Williams County, North Dakota, and therein recorded in Book 40 of Deeds on page — thereof.

That said defendant Spring Brook Trading Company is and ever since April 29th, 1915 has been the owner in fee simple of Lot 3 Block 8 of East Spring Brook, North Dakota; the origin, nature and extent of its said title thereto is derived from and through said Philander Pollock, the settler and patentee of said land as hereinbefore stated, and that by mesne conveyances from Philander Pollock said Lot 3 aforesaid was duly conveyed to Eli Kingston, and that on April 29th, 1915 said Eli Kingston and Edna Kingston, his wife in consideration of \$130.00 then paid made, executed and delivered unto the said Spring Brook Trading Company a good and sufficient warranty deed conveying said lot aforesaid unto said Spring Brook Trading Company, which said deed on May 3, 1915 was duly filed for record in the office of said Register of Deeds aforesaid and therein recorded in Book 50 of Deeds on page — thereof.

That said defendant Frank M. Craig is and ever since October 9th, 1906 has been the owner in fee simple of Lots 3 and 4 Block 7 of East Spring Brook, North Dakota; the origin, nature and extent of his said title thereto is derived from and through said Philander Pollock, the settler and patentee of said land as hereinbefore stated, and that by mesne conveyances from Philander Pollock said Lots 3 and 4 aforesaid were duly conveyed to Nickolas W. Comford, and Philander Pollock joining with him therein, in consideration of \$40.00 then paid, made, executed and delivered unto said Frank M. Craig and B. S. Marple, a good and sufficient warranty deed conveying said lots aforesaid to Frank M. Craig and B. S. Marple, which said deed was on October 18th, 1906 duly filed for record in the office of said Register of Deeds aforesaid and therein recorded in Book 28 of Deeds on page 286 thereof; and that thereafter on October 9, 1906 said B. S. Marple aforesaid and Emma A. Marple, his wife, in consideration of \$475.00 then paid, made, executed and delivered a good and sufficient warranty deed conveying said lots aforesaid unto said Frank M. Craig which said deed on October 11, 1906 was duly filed for record in the office of said Register of Deeds aforesaid and therein recorded in Book 28 of Deeds on page — thereof.

That each of said defendants aforesaid in good faith for full value and without notice so purchased said lots aforesaid.

IV.

Further answering and as a separate defense these defendants re-allege each and all of the allegations of paragraph three above-
11 said and further allege:

That the Village of East Spring Brook was duly established, platted and laid out on July 9, 1903, by Philander Pollock, Nickolas W. Comford, R. Kingston, W. Kingston and J. L. Kingston as proprietors thereof; that on said date last aforesaid said proprietors duly made, executed and filed in the office of the Register of Deeds of Williams County, North Dakota, a duly certified plat of said village under the name and designation of East Spring Brook; that said village as so platted embraced all the lots and blocks referred to in said complaint and certain streets and alleys, some of which are wholly and others partly located upon the lands described in said complaint and now claimed by said railway company; that for more complete description of said plat reference is hereby made to said plat which was duly filed as aforesaid; that when said village was so first established, laid out and so platted and ever since each and all the streets and alleys therein named were opened up and ever since maintained and used by the general public for public travel; that Front Street shown on said plat and so dedicated to public use lies wholly upon the lands now claimed by the said plaintiff as does part of Main Street, First Street and Pollock Street, also part of the public alley in said Block 7; That all of the lands embraced within the boundary lines of said streets and alleys and each of them aforesaid ever since 1903 have been and now are used by the general public as and for public highways and said highways and each of them have been during all of said time maintained, worked and improved as public highways at the public expense and said public during all of said time has had and now has the open, exclusive and adverse possession thereof and claimed and now claim the same as public highways and streets, and have spent of the public funds in the grading, bridging and improving the same during said time and in

12 good faith many hundred of dollars. That each and all the lots so owned by these defendants and described in said complaint, as well as each and all the other lots described in said complaint and owned by other defendants, face and front upon Main Street, Pollock Street and Front Street respectively, as is more fully shown by said plat, and the respective streets so running in front of each of said lots aforesaid is and during all the time herein stated has been the only public highway affording access to and egress from these said lots and each of said lots, including the lots owned by these defendants, have been repeatedly bought and sold in good faith and for value with reference to said streets and each thereof and each of these said answering defendants so purchased said lots owned by them relying upon the location of said streets and with reference thereto; that beginning with a time shortly after the said townsite of East Spring Brook was so established and continuing year after year thereafter until the present time each of said lots hereinafter stated and now owned by these defendants were improved by these defend-

ants and their respective grantors by gradings, fillings, erections of buildings and many other improvements thereon and walks in front and about the same each and all made in good faith and each and all said improvements was so made with reference to said streets and said village of East Spring Brook as so laid out and established; that these defendants and their grantors on whom they claim respective title while so occupying said lots respectively under said color of title aforesaid each in good faith and adversely to said plaintiff did permanently improve each of said lots in the manner and to the extent following, namely:

That said lots 1 and 2 Block 8 are, and ever since about the year 1906 have been, permanently improved by the erection thereon by the defendant Bank's grantor and said Bank and Trading Company of office building, lumber yard buildings and sheds, yards, out buildings and enclosing said lots with fences, all of which structures have been ever since maintained thereon; that the value of 13 said lots 1 and 2 without said improvements is \$300.00 and the value of said improvements so placed thereon is \$3,000.00,

Said lot 3 Block 8 aforesaid, is, and ever since about the year 1906 has been, permanently improved by the erection thereon by the defendant Trading Company's grantor and said Trading Company of lumber yard, buildings, yards, sheds, out buildings, and enclosing said lot with fences, all of which structures have ever since been maintained thereon; that the value of said lot without said improvement is \$200.00 and the value of said improvements so placed thereon is \$2,000.00.

Said Lots 3 and 4 Block 7 are, and ever since about the year 1906 have been, permanently improved by the erection thereon by the defendant Craig's grantor and said Craig of a large two story hotel building, out buildings, walks and other improvements, all of which structures have ever since been maintained thereon; that the value of said lots without said improvements is \$400.00 and the value of said improvements is \$3,000.00.

Lot 1 Block 7 is, and ever since about the year 1906 has been, permanently improved by the erection thereof by the defendant purchaser thereof and his grantors a large hardware store building and machine sheds, which said improvements are reasonably of the value of \$4,000.00, all of which structures have been ever since maintained thereon.

Lots 5 and 6 Block 7 are, and ever since about the year 1905 have been, permanently improved by the erection thereon by the defendant purchaser thereof and his grantor a large livery and sales barn, at a cost of upwards of \$3,000.00 the then value thereof.

Lot 16 Block 7 is, and ever since the year 1907 has been, permanently improved by the erection thereon, by the defendant purchaser thereof and his grantors, a large dwelling house and out 14 buildings, which said improvements are of the value of upwards of \$1,500.00 all of which structures have ever since been maintained thereon.

That Lot 1 Block 7, in 1904 was also permanently improved by the defendant purchaser thereof and his grantor as early as 1905 by

the erection thereon of a large Pool Hall building, which building was maintained and used thereon for many years.

And each of said defendants and their said grantors, respectively, ever since 1903 have paid taxes and assessments that were duly levied and assessed against said property ever since the said year 1903. That said defendant Craig particularly for upwards of ten years prior to the commencement of this action has been and now is in the actual, open, adverse and undisputed possession of all of lots 3 and 4 Block 7 aforesaid, so vested in him under his said title hereinbefore stated, and during all of said time he, said Craig, has paid all taxes and assessments thereon legally levied thereon.

That ever after the building and improving of said lots aforesaid and each thereof the said buildings were occupied and used for business and residential purposes by these defendants and their respective grantors and are now so occupied and used by the defendants.

That from and after the first settlement on said lands by said Pollock and the laying of said townsite of East Spring Brook as aforesaid in 1903, the said plaintiff, its officers and agents, had actual notice and full knowledge of each and all the facts aforesaid in this paragraph stated; that notwithstanding the facts aforesaid said plaintiff, its officers and agents, ever remained silent and made no claim of title to any part or portion of the lands described in said complaint until shortly prior to the bringing of this action.

15 That the said village of East Spring Brook aforesaid is and for several years last past has been a municipal corporation duly organized and existing under the laws of the State of North Dakota. That several years ago a state highway was duly laid out and established passing through the state of North Dakota, to the Western boundary line thereof, and that said state highway as so laid out and established passes through Williams County and along and over said Main Street of the village of East Spring Brook, aforesaid. That said plaintiff never at any time caused the conveyance under which it claims title to said lands, or any conveyance to said lands to be filed or recorded in the Register of Deed's office of Williams County, North Dakota, nor has any conveyance whatever to said plaintiff been filed or recorded, nor has plaintiff ever filed with the County Auditor of Williams County a map showing the correct location, or any location, of all rights of way and side tracks in said County owned or occupied by such corporation and the number of acres in each parcel of land included by such corporation in said county as right of way, nor any map whatever nor has any conveyance whatever pertaining to said premises in question or any portion thereof, ever been recorded in the office of the Secretary of State of North Dakota, nor has any of the premises so described in said complaint and embraced within the boundary lines of East Spring Brook as platted, as aforesaid, ever been used by said plaintiff, or any railroad company, as right of way or otherwise for railroad purposes.

That by reason of the facts aforesaid said plaintiff is and ought to

be held guilty of laches and estopped from claiming any right, title or interest in or to any of the land described in said complaint.

Second. Further answering and as a cross complaint and counter claim herein, these defendants and each of them further allege:

That said plaintiff is a foreign corporation, that defendant, the Spring Brook Bank and the defendant Spring Brook Trading Company are each a domestic corporation.

16 That defendants further reallege each and all the allegations of paragraphs three and four of the foregoing answer and make the same part and parcel of this cross complaint and counter claim as fully as though all thereof were herein again set forth.

Wherfore these defendants pray judgment that plaintiff's said action be dismissed, that title to said lots respectively be quieted in these defendants respectively as against said plaintiff and for such other and further relief as is just with costs and disbursements.

And that in the event that plaintiff recover said premises it be adjudged to pay said defendant Spring Brook State Bank, the sum of \$3,000.00, said defendant Spring Brook Trading Company the sum of \$2,000.00, and said defendant Frank M. Craig the sum of \$3,000.00, the value of said permanent improvements, with costs and disbursements herein.

CRAVEN & CONVERSE.
Attorneys for said Defendants Answering.

Office and postoffice address, Williston, N. Dak.

STATE OF NORTH DAKOTA,
County of Williams, ss:

Thos. F. Craven, being duly sworn says: that he is one of the attorneys for the defendants in the above entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his best knowledge, information and belief.

THOS. F. CRAVEN.

Subscribed and sworn to before me this 30th, day of April, 1920.

A. L. BUTLER,
Notary Public, Williams County, North Dakota.

My Commission expires: September 12th, 1925.

[Endorsed:] Filed May 27, 1920.

17 STATE OF NORTH DAKOTA,

County of Williams;

In District Court, 11th Judicial District.

(Title as Last Above.)

STATE OF NORTH DAKOTA,

County of Grand Forks, ss:

T. A. Toner being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff in the above entitled action. That to the best of affiant's knowledge, information and belief the place of residence of the following named defendants is at the following named places, to wit:

Everett A. Webster and Martha Webster, McIntosh, Minn.

Charlie F. Bellet and Alice Bellet, 935 Fifth Street, Chico, California.

Alva Ulrich and Hattie Ulrich, Somers, Montana.

That the said defendants Everett A. Webster and Martha Webster, Charles F. Bellet, Alice Bellet, Alva Ulrich and Hattie Ulrich are not residents of the state of North Dakota, and that personal service of the summons and complaint in this action cannot be made upon either or any of the defendants above named within the state of North Dakota, all of which appears by the return of the sheriff of Williams County, North Dakota, attached to the original summons and complaint.

That the defendants, Everett A. Webster and Martha Webster, Charlie F. Bellet, Alice Bellet, Alva Ulrich and Hattie Ulrich are the owners of or have interests in the following described real estate located in Williams County, North Dakota, to-wit:

Lot 14, Block 1; Lots 5 and 6 Block 7, Lot 16 of Block 1, of East Spring Brook, North Dakota. That the object of this action is to exclude the defendants from any estate or interest in a portion of said lots which constitutes the right of way of the plaintiff, and which is more particularly described in the complaint on file in this action.

T. A. TONER.

Subscribed and sworn to before me September 17th, 1918.

FRANK KILGORE,
Notary Public, North Dakota.

My Commission Expires March 25, 1921.

[Endorsed:] Filed Sept. 19, 1918.

18 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Amended Answer.

Separate Answer of Daniel Jacobson.

Comes now the above named Defendant and for his Answer to the complaint in said Action

I.

Admits the allegations contained in Paragraphs One and Two.

II.

The Defendant Specifically denies the allegations contained in Paragraph Three of said Complaint, excepting that he specifically admits that the Defendant, Daniel Jacobson is the owner of Lot One (1) Block Seven (7) of East Spring Brook, and now is and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said Defendant is encroaching or trespassing upon the property, or any portion thereof owned by the Plaintiff herein, and that he is in possession of such by reason of his right and title as owner, which title and ownership originates from title obtained by one Philander Pollock and subsequent grants, deeds and transfers to this Defendant as appear of record.

III.

The Defendant admits the allegations contained in *Par* Paragraph Four and claim- that the estate and interest and right of possession claimed by the said Defendant is by virtue of his right as owner thereof, which ownership is claimed through right of title obtained as follows, to-wit: That the origin, nature and extent of their title thereto is from one Philander Pollock who prior to 1900 and under the United States Homestead Laws established residence and made improvements upon the lands located in the State of North Dakota and described as follows, to-wit:

The Northwest Quarter of the Northeast Quarter of Section 18, Township 155 North of Range 99 West.

And from said time maintained residence thereon in compliance with the Homestead Laws of the United States until same was patented to him upon February 28th, 1906, that thereafter and in

compliance with the statute of the State of North Dakota, said Philander Pollock as the owner thereof caused to be made and filed in the office of the Register of Deeds of Williams County, a certified plat known and designated as East Spring Brook, which plat is still of file and record in said office and covers a portion of the tract known as the Northwest — (N. W. $\frac{1}{4}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of Section 18, and that said plat shows and designates the lots hereinbefore described and claimed by the Defendants as their property and that by conveyance in writing to said hereinbefore mentioned property was conveyed by said Pollock as said patentee to Nickolas N. Conford, who conveyed to Berry S. Marple who deeded to Jacobson by written deed and grant of conveyance through said deed of conveyance and other deeds *imitating* therefrom all of which are filed in the office of the Register of Deeds, Williams County, upon which this Defendant claims his right and title.

IV.

Further *answers* and as separate defense this defendant re-Alleges; on matter heretofore set forth in first cause of action and 19 further alleges:

That prior to 1900 the town was established and known and designated as Springbrook, which town embraced lands in question in this action, and that said town was plat-ed as set forth in first cause of action by Philander Pollock who was the owner and proprietor thereof, and that in 1903 on July 9th, of that year he caused to be filed in the office of the Register of Deeds of Williams County, North Dakota, a plat in which was a certified plat of said town designated as East Springbrook which plat divided a portion of the lands known and designated as the Northwest Quarter of the Northeast Quarter of Section Eighteen (18), and which plat divided that certified plat or portion thereof into street-, alley- and block-, which were numbered and designated, and that said lands so platted and divided have since such time been used and occupied streets, alleys graded and improved and buildings have been erected and constructed on the lots contained in said plat and particularly the premises claimed by this Defendant, and that the Street particularly known as Front Street is within the boundary of land now claimed by the Plaintiff and for more than twenty years the portion of said plat known as Front Street has been used as a public high-way or in fact since 1898 and that since then the hereinbefore described lot which is claimed by the Defendant, *the lot* has been builded upon, occupied and improved for more than ten years without any claim of right or opposition of the Plaintiff herein, and was so occupied from year to year up to and including the present time, and was so improved by these defendants or their grantors and that the said Defendants and their grantors openly occupied and continued to use for business and residence purposes and the whole thereof of the property described and hereinbefore set forth, and that from the time of settlement on said land under the Homestead Laws of the United States up to and including the present time the plaintiff Railway Company, its officers and agents, had full notice and knowl-

edge of such facts and that notwithstanding the use and occupancy of which was known to the Plaintiff, the said Plaintiff remained silent and has never made any claim of title until the commencement of proceedings for commencement of this action. That fully disregarding the right title claim occupancy or interest — this defendant or his grantors the said Plaintiff Company allowed and permitted same to be done, used and occupied without any objection or protest.

Further *answers*. The Defendant Alleges that the plaintiff never at any time cause- the plats or any right of conveyance from the Government or otherwise to lands in question under which it claimed title to said lands to be filed or recorded in the office of the Register of Deeds of Williams County, North Dakota, nor has any conveyance whatever to said Plaintiff as to the lands described herein been made by the United States Government or otherwise in behalf of the Plaintiff ever been filed or recorded, nor has Plaintiff ever filed with the County Auditor of said Williams County, a map showing the correct location of said right of way or side tracks in said Williams County, owned or occupied by said Plaintiff to be filed in the office of the Auditor of Williams County as required by the Statute of the State of North Dakota, nor has any conveyance to the premises showing conveyance to the Plaintiff ever been recorded in the office of the Secretary of State, of North Dakota nor has any of the property claimed by this Defendant been used or occupied by the Plaintiff or any Railway Company as right of way and that by reason thereof and by reason of the right and occupancy of Defendant herein, this Plaintiff has been guilty of Laches and is stopped from claiming any right title or interest to lands hereinbefore described.

WM. G. OWENS,
Attorney for Defendant Daniel Jacobson.

20 STATE OF NORTH DAKOTA,
County of Williams, ss:

Wm. G. Owens, being first duly sworn deposes and says that he is attorney for the Defendant, Daniel Jacobson, in the foregoing action, that he has read the foregoing Amended Answer, and that the said Amended Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 30th day of April 1920.

GEO. A. GILMORE,
Notary Public, Williams County, North Dakota.

My commission expires Nov. 28, 1920.

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Separate Answer of Daniel Jacobson.

Comes now the above named Defendant and for his Answer to the Complaint in said Action

I.

Admits the allegations contained in Paragraphs One and Two.

II.

The Defendant specifically denies the allegations contained in Paragraph Three of said Complaint, excepting that he specifically admits that the Defendant, Daniel Jacobson is the owner of Lot One (1) Block Seven (7) of East Spring Brook, and now is and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said Defendant is encroaching or trespassing upon the property, or any portion thereof owned by the Plaintiff herein, and that he is in possession of such by reason of his right and title as owner.

III.

The Defendants admits the allegations contained in Paragraph Four and claim that the estate and interest and right of possession claimed by the said Defendant is by virtue of his right as owner thereof.

Wherefore, Defendant demands judgment that the said action be dismissed and the Plaintiff be decreed to not have any right, title, or interest or claim to the said property as set forth by the allegations of said Complaint, or otherwise, and that the Plaintiff be forever debarred from asserting or claiming any right, therein, and that the said Action be dismissed and Defendants have *their* costs and disbursements herein.

WM. G. OWENS,
Attorneys for Defendant Daniel Jacobson.

STATE OF NORTH DAKOTA,
County of Williams, ss:

Wm. G. Owens, being first duly sworn on his oath deposes and says that he is the attorney for the Defendant, Daniel Jacobson, in the foregoing action; that he has read the foregoing Answer and that the said Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 7th day of Oct. 1918.

JOHN J. MURPHY,
Notary Public.

My commission expires, Feb. 5, 1921.

22 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Amended Answer.

Separate Answer of Henry Graichen and Christie Graichen.

Comes now the above named Defendants and for their answers to the Complaint in said action

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The Defendants specifically deny the allegations contained in Paragraph Three of said Complaint, excepting that he specifically admits that the Defendant, Henry Graichen, is the owner of Lots One (1) and two (2) Block One (1) of East Spring Brook, and now is and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said Defendant is encroaching or trespassing upon the property, or any portion thereof owned by the plaintiff herein, and that he is in possession of such by reason of his right and title as owner, which title and ownership originates from title obtained by one Philander Pollock and subsequent grants, deeds and transfers to this Defendant, as appear of record.

III.

The Defendants admit the allegations contained in paragraph Four and claim that the estate and interest and right of possession claimed by the said Defendant is by virtue of his right as owner thereof, which ownership is claimed through right of title obtained as follows, to-wit: That the origin, nature and extent of their title thereto is from one Philander Pollock who prior to 1900 and under the United States Homestead Laws established residence and made improvements upon the lands located in the State of North Dakota and described as follows, to-wit:

The Northwest Quarter of the Northeast Quarter of Section 18 Township 155 North of Range 99 West,

And from said time maintained residence thereon in compliance with the Homestead Laws of the United States until same was patented to him upon February 28th, 1906, that thereafter and in compliance with the Statute of the State of North Dakota, said Philander Pollock as the owner thereof caused to be made and filed in the office of the Register of Deeds of Williams County, a certified plat known and designated as East Spring Brook, which plat is still of file and of record in said office and covers a portion of the tract known as the Northwest quarter of the Northeast quarter of Section 18, and that said plat shows and designates the lots hereinbefore described and claimed by the Defendants as their property and that by conveyance in writing to said hereinbefore mentioned property was conveyed by said Pollack as said patentee to Nickolas W. Comfort and by Pollack and Comfort to Edna L. Shartle and by Shartle to Graichen by written deed and grant of conveyance through said deed of conveyance and other deeds emanating therefrom all of which are filed in the office of the Register of Deeds Williams County, upon which this Defendant claims his right and title.

IV.

Further answers and as separate defense this defendant re-alleges: on matter heretofore set forth in first cause of action and further alleges:

That prior to 1900 the town was established and known and designated as Springbrook, which town embraced lands in 23 question in this action, and that said town was platted as set forth in first cause of action by Philander Pollock who was the owner and proprietor thereof, and that in 1903 on July 9th, of that year he caused to be filed in the office of the Register of Deeds of Williams County, North Dakota, a plat in which was a certified plat of said town designated as East Springbrook which plat divided a portion of the lands known and designated as the Northwest quarter of the Northeast quarter of Section 18, and which plat divided that portion into street, alley and block, which were numbered and designated, and that said lands so platted and divided have since such time been used and occupied streets, alleys, graded and improved and buildings erected and constructed on the lots contained in said plat and particularly the premises claimed by this Defendant, and that the street particularly known as Front Street is within the boundary of land now claimed by the Plaintiff and for more than twenty years the portion of said plat known as Front Street has been used as a public highway or in fact since 1898 and that since then the hereinbefore described lot which is claimed by the Defendant, the lot has been builded upon, occupied and improved for more than ten years without any claim of right or opposition of the Plaintiff herein, and was so occupied from year to year up to and including the present time, and was so improved by these defendants or their grantors and that the said Defendants and their grantors openly occupied and continued to use for business and residential purposes and the whole thereof of the property described

and hereinbefore set forth, and that from the time of settlement on said land under the Homestead Laws of the United States up to and including the present time the Plaintiff Railway Company, its officers and agents, had full knowledge of such facts and that notwithstanding the use and occupancy of which was known to the Plaintiff, the said Plaintiff remained silent and has never made any claim of title until the commencement of proceedings for the commencement of this action. That fully disregarding the right title claim occupancy or interest this defendant or his grantors the said Plaintiff Company allowed and permitted the same to be done, used and occupied without any objection or protest.

Further answers, the Defendant alleges that the Plaintiff never at any time cause the plats or any right of conveyance from the Government or otherwise to lands in question under which it claimed title to said lands to be filed or recorded in the office of the Register of Deeds of Williams County, North Dakota, nor has any conveyance whatever to said Plaintiff as to the lands described herein been made by the United States Government or otherwise in behalf of the Plaintiff ever been filed or recorded, nor has Plaintiff ever filed with the County Auditor or said Williams County, a map showing the correct location of said right of way or side tracks in said Williams County, owned or occupied by said Plaintiff to be filed in the Office of the Auditor of Williams County as required by the statute of the State of North Dakota, nor has any conveyance to the premises showing conveyance to the Plaintiff ever been recorded in the office of the Secretary of State, of North Dakota, nor has any of the property claimed by this Defendant been used or occupied by the Plaintiff or any Railway Company as right of way and that by reason thereof and by reason of the right and occupancy of Defendant herein, this Plaintiff has been guilty of Laches and is stopped from claiming any right title or interest to lands herein before described.

WM. G. OWENS,
Attorney for the Defendants,
Henry Graichen and Christie Graichen.

STATE OF NORTH DAKOTA,
County of Williams, ss;

Wm. G. Owens, being first duly sworn deposes and says that he is attorney for the Defendants, Henry Graichen and Christie Graichen in the foregoing action, that he has read the foregoing Amended Answer, and that the said Amended Answer is true
24 to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 10th day of Jany, 1920,
GEO. A. GILMORE,
Notary Public, Williams County, N. D.

My commission expires Nov. 28, 1920.

[Endorsed:] Filed May 27, 1920.

24 GREAT NORTHERN RY. CO. VS. V. H. STEINKE ET AL.

25 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Answer.

Separate Answer of Henry Graichen and Christie Graichen.

Comes now the above named Defendants and for their answer to the Complaint in said action:

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The Defendants specifically deny the allegations contained in Paragraph Three of said Complaint, excepting that they specifically admit that the Defendant, Henry Graichen is the owner of a portion of the Lots One and Two (1 & 2) in Block One (1) of East Spring Brook, and now is and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said Defendant is encroaching or trespassing upon the property or any portion thereof owned by the Plaintiff herein, and that he is in possession of such by reason of his right and title as owner.

III.

The Defendants admit the allegations contained in Paragraph Four, and claim that the estate and interest and right of possession, claimed by the said Defendant, is by virtue of his right as owner thereof.

Wherefore, Defendants demand Judgment that the said action be dismissed and the Plaintiff be decreed to not have any right, title or interest or claim to said property as set forth by the allegations of said Complaint or otherwise, and that the Plaintiff be forever debarred from asserting or claiming any right therein, and that the said action be dismissed and defendants have their costs and disbursements herein.

WM. G. OWENS,
*Attorney for Defendants Henry
Graichen and Christie Graichen.*

STATE OF NORTH DAKOTA,
County of Williams, ss:

Wm. G. Owens being first duly sworn deposes and says that he is attorney for Defendants Henry Graichen and Christie Graichen, in the foregoing action, that he has read the foregoing Answer and that the said Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and Sworn to before me this 7 day of October 1918.

JOHN J. MURPHY,
Notary Public, Wms. Co. N. D.

My commission expires Feb. 5, 1921.

[Endorsed:] Filed May 27, 1920.

26 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Amended Answer.

Separate Answer of Vivian H. Steinke and Paul E. Steinke.

Comes now the above named Defendants and for their Answer to the Complaint in said Action

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The Defendants specifically deny the allegations contained in Paragraph Three of said Complaint, excepting that he specifically admits that the Defendant, Vivian H. Steinke, is the owner of a portion of the unplatte northwest quarter of the North East quarter of Section 18, and now is and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said Defendant is encroaching or trespassing upon the property, or any portion thereof owned by the Plaintiff herein, and that he is in possession of such by reason of his right and title as owner, which title and ownership originates from title obtained by one Philander Pollock and subsequent grants, deeds and transfers to this Defendants — appear of record.

III.

The Defendants admit the allegations contained in Paragraph Four and claim that the estate and interest and right of possession claimed by the said Defendant is by virtue of his right as owner thereof, which ownership is claimed through right of title obtained as follows, to-wit: That the origin, nature and extent of their title thereto is from one Philander Pollock who prior to 1900 and under the United States Homestead Laws established residence and made improvements upon the lands located in the State of North Dakota and described as follows, to-wit:

The Northwest Quarter of the Northeast Quarter of Section 18, Township 155 North of Range 99 West.

And from said time maintained residence thereon in compliance with the Homestead Laws of the United States until same was patented to him on February 28th, 1906, that thereafter and in compliance with the statute of the State of North Dakota, said Philander Pollock as the owner thereof caused to be made and filed in the office of the Register of Deeds of Williams County, a certified plat known and designated as East Springbrook which plat is still of file and of record in said office and covers a portion of the tract known as the Northwest quarter of the Northeast quarter of Section 18, and that said plat shows and designates the lots hereinbefore described and claimed by the Defendants as their property and that by conveyance in writing to said hereinbefore mentioned property was conveyed by said Pollock as said patentee to Nickolas W. Comfort and by Elizabeth Comfort *as being Nickolas* to Vivian H. Steinke by written deed and grant of conveyance through said deed of conveyance and other deeds emanating therefrom all of which are filed in the office of the Register of Deeds, Williams County, upon which the Defendant claims his right and title.

27. Further *answers* and as separate defense this defendant re-alleges on matter heretofore set forth in first cause of action and further alleges:

That prior to 1900 the town was established and known and designated as Springbrook, which town embraced lands in question in this action, and that said town was platted as set forth in first cause of action by Philander Pollock who was the owner and proprietor thereof, and that in 1903 on July 9th, of that year he caused to be filed in the office of the Register of Deeds of Williams County, County, North Dakota, a plat in which was a certified plat of said town designated as East Springbrook which plat divided a portion of the lands known and designated as the Northwest Quarter of the Northeast Quarter of Section Eighteen (18), and which plat divided that certified plat or portion thereof into street, alley and block, which were numbered and designated, and that said lands so platted and divided have since such time been used and occupied streets alleys, graded and improved and buildings have been erected and constructed on the lots contained in said plat and particularly the

premises claimed by this Defendant, and that the Street particularly known as Front Street is within the boundary of land now claimed by the Plaintiff and for more than twenty years the portion of said plat known as Front Street has been used as a public highway or in fact since 1898 and that since then the hereinbefore described lot which is claimed by the Defendant, the lot has been builded upon, occupied and improved for more than ten years without any claim or right or opposition of the Plaintiff herein, and was so occupied from year to year up to and including the present time and was so improved by these Defendants or their grantors and that the said Defendants and their grantors openly occupied and continued to use for business and residential purposes and the whole thereof of the property described and hereinbefore set forth, and that from the time of settlement of said land under the Homestead Laws of the United States up to and including the present time the Plaintiff Railway Company, its officers and agents, had full notice and knowledge of such facts and that notwithstanding the use and occupancy of which was shown to the Plaintiff, the said Plaintiff remained silent and has never made any claim of title until the commencement of proceedings for commencement of this action. That fully disregarding the right title claim occupancy or interest this Defendant or his grantors the said Plaintiff Company allowed and permitted same to be done, used and occupied without any objection or protest.

Further answers, the Defendant alleges that the Plaintiff never at any time caused the plats or any right of conveyance from the Government or otherwise to lands in question under which it claimed title to said lands to be filed or recorded in the office of the Register of Deeds of Williams County, North Dakota, nor has any conveyance whatever to said Plaintiff as to the lands described herein been made by the United States Government or otherwise in behalf of the Plaintiff ever been filed or recorded, nor has Plaintiff ever filed with the County Auditor of said Williams County, a map showing the correct location of said right of way or side *tracts* in said Williams County, owned or occupied by said Plaintiff to be filed in the office of the Auditor of Williams County as required by the Statute of the State of North Dakota, nor has any conveyance to the premises showing conveyance to the Plaintiff ever been recorded in the office of the Secretary of State, of North Dakota, nor has any of the property claimed by this Defendant been used or occupied by the Plaintiff or any Railway Company as right of way and that by reason thereof and by reason of the right and occupancy of Defendant herein, this Plaintiff has been guilty of Laches and is stopped from claiming any right, title, or interest to lands hereinbefore described.

WM. G. OWENS,

*Attorney for the Defendants
Vivian H. Steinke and Paul E. Steinke.*

28 STATE OF NORTH DAKOTA,
County of Williams, ss;

Wm. G. Owens, being first duly sworn deposes and says that he is Attorney for the Defendants Vivian H. Steinke and Paul E. Steinke,

in the foregoing action, that he has read the foregoing Amended Answer, and that the said Amended Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 30th, day of April 1920.
GEO. A. GILMORE,
Notary Public, Williams County, North Dakota.

My Commission expires, Nov. 28, 1920.

[Endorsed:] Filed May 27, 1920.

29 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Answer.

Separate Answer of Vivian H. Steinke and Paul E. Steinke.

Comes now the above named Defendants and for their Answer, to the Complaint in said Action.

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The Defendants specifically deny the allegations contained in Paragraph Three of said Complaint, excepting that they specifically admit that the Defendant, Vivian H. Steinke is the owner of a portion of the unplatte Northwest Quarter (N. W. $\frac{1}{4}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of Section Eighteen (18), in Township One Hundred Fifty-five (155) North of Range Ninety-nine (99), and now is and and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said defendant is encroaching or trespassing upon the property or any portion thereof owned by the Plaintiff herein, and that she is in possession thereof by reason of her right and title as owner, and that if the Spring Brook State Bank is interested therein it is interested solely by reason of the right and title of the said Defendant, Vivian H. Steinke, and by reason of a certain mortgage lien created by the Defendant.

III.

The Defendants admit the allegations contained in Paragraph Four, and claim that the estate and interest and right of possession,

claimed by the said defendant, is by virtue of her right as owner thereof.

Wherefore, Defendants demand Judgment that said action be dismissed and the Plaintiff be decreed to not have any right, title or interest or claim to the said property as set forth by the allegations of said Complaint, or otherwise; and that the Plaintiff be forever debarred from asserting or claiming any right therein, and that the said action be dismissed, and Defendants have their costs and disbursements herein.

WM. G. OWENS,
Attorney for Defendants
Vivian H. Steinke and Paul E. Steinke.

STATE OF NORTH DAKOTA,
County of Williams:

Wm. G. Owens being duly sworn deposes and says that he is attorney for Defendants, Vivian H. Steinke and Paul E. Steinke, in the foregoing action, that he has read the foregoing Answer and that the said Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 7 day of October, 1918.

JOHN J. MURPHY,
Notary Public, Williams Co., North Dakota.

My commission expires Feb. 5, 1921.

[Endorsed:] Filed May 27, 1920.

30 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Amended Answer.

Separate Answer of Everett A. Webster, Martha Webster, Walter T. Webster, and Addie N. Webster.

Comes now the above named defendants and for their answer to the Complaint in said action.

I.

Admit the allegations contained in paragraphs one and two.

II.

The Defendants specifically deny the allegations contained in paragraph three of said Complaint, excepting that they specifically admit that the defendants Everett A. Webster, Martha Webster, Walter T. Webster and Addie N. Webster are the owners of Lot 14, Block 1, and now are and at all times hereinafter mentioned have been in possession of said tract and parcel of land, and specifically deny that said defendants are encroaching or trespassing upon the property or any portion thereof owned by the Plaintiff herein, and that they are in possession thereof by reason of their right and title as owners, which title and ownership originates from title obtained by one Philander Pollock and subsequent grants, deeds and transfers to this Defendant as appear or record.

III.

The Defendants admit the allegations contained in Paragraph Four and claim that the estate and interest and right of possession claimed by the said Defendant is by virtue of his right as owner thereof, which ownership is claimed through right of title obtained as follows, to-wit: That the origin, nature and extent of their title thereto is from one Philander Pollock who prior to 1900 and under the United States Laws established residence and made improvements upon the lands located in the State of North Dakota and described as follows, to-wit:

The Northwest quarter of the Northeast Quarter of Section 18, Township 155 North of Range 99 West.

And from said time maintained residence thereon in compliance with the Homestead Laws of the United States until same was patented to him on Feb. 28th, 1906, that thereafter and in compliance with the statute of the State of North Dakota, said Philander Pollock as the owner thereof caused to be made and filed in the office of the Register of Deeds of Williams County, a certified plat known and designated as East Springbrook which plat is still of file and of record in said office and covers a portion of the tract known as the Northwest quarter of the Northeast quarter of Section 18, and that said plat shows and designates the lots hereinbefore described and claimed by the Defendants as their property and that by conveyance in writing to said hereinbefore mentioned property was conveyed by said Pollock as said patentee to Nicholas W. Comfort who deeded to Vivian who conveyed to Everett and Walter T. Webster by written deed and grant of conveyance through said deed of conveyance and other deeds emanating therefrom all of which are filed in the office of the Register of Deeds, upon which this Defendant claims his right and title.

IV.

31 Further answers and as separate defense this defendant re-alleges: on matter heretofore set forth in first cause of action and further alleges:

That prior to 1900 the town was established and known and designated as Springbrook, which town embraced lands in question in this action, and that said town was platted as set forth in first cause of action by Philander Pollock who was the owner and proprietor thereof, and that in 1903 on July 9th, of that year he caused to be filed in the office of the Register of Deeds of Williams County, North Dakota, a plat in which was a certified plat or portion thereof into street, alley and block, which were numbered and designated, and that said lands so platted and divided have since such time been used and occupied streets alleys graded and improved and buildings have been erected and constructed on the lots contained in said plat and particularly the premises claimed by this Defendant, and that the Street particularly known as Front Street is within the boundary of land now claimed by the Plaintiff and for more than twenty years the portion of said land known as Front Street has been used as a public highway or in fact since 1898 and that since then the hereinbefore described lot which is claimed by the Defendant, the lot has been builded upon, occupied and improved for more than ten years without any claim of right or opposition of the Plaintiff herein, and was so occupied from year to year up to and including the present time, and was so improved by these defendants or their grantors, and that the said Defendant and their grantors openly occupied and continued to use for business and residential purposes and the whole thereof of the property described and hereinbefore set forth, and that from the time of settlement on said land under the Homestead law of the United States up to and including the present time the Plaintiff Railway Company, its officers and agents, had full notice and knowledge of such facts and that notwithstanding the use and occupancy of which was known to the Plaintiff, the said Plaintiff remained silent and has never made any claim of title until the commencement of proceedings for the commencement of this action. That fully disregarding the right, title, claim, occupancy or interest this Defendant or his grantors the said Plaintiff Company allowed and permitted same to be done, used and occupied without any objection or protest.

Further answers, the defendants allege that the Plaintiff never at any time caused the plats or any right of conveyance from the Government or otherwise to lands in question under which it claimed title to said lands to be filed or recorded in the office of the Register of Deeds of Williams County, North Dakota, nor has any conveyance whatever to said Plaintiff as to the lands described herein been made by the United States Government or otherwise in behalf of the Plaintiff ever been filed or recorded, nor has Plaintiff ever filed with the County Auditor of said Williams County, a map showing the correct location of said right of way or side tracks in said Williams County, owned or occupied by said Plaintiff to be filed in the office of the Auditor of Williams County as required by the Statute of the State of North Dakota, nor has any conveyance to the premises showing conveyance to the Plaintiff ever been recorded in the office of the Secretary of State of North Dakota, nor has any of the property claimed by this Defendant been used or occupied by the Plaintiff or

any Railway Company as right of way and that by reason thereof and by reason of the right and occupancy of the Defendant herein, this Plaintiff has been guilty of Laches and is stopped from Claiming any right title or interest to lands hereinbefore described.

WM. G. OWENS,

*Attorney for the Defendants Everett
A. Webster, Martha Webster, Wal-
ter T. Webster, and Addie N.
Webster.*

32 STATE OF NORTH DAKOTA,
County of Williams:

Wm. G. Owens, being first duly sworn deposes and says that he is attorney for the Defendants, Everett A. Webster, Martha Webster, Walter T. Webster and Addie N. Webster, in the foregoing action, that he has read the foregoing Amended Answer, and that the said Amended Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to befor- me this 30th day of April of 1920.

GEO. A. GILMORE,
Notary Public, Williams County, North Dakota.

My Commission expires Nov. 28, 1920.

[Endorsed:] Filed May 27, 1920.

33 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Answer.

Separate Answer of Everett A. Webster, Martha Webster, Walter T. Webster, and Addie N. Webster.

Comes now the above named defendants and for their Answer to the complaint in said action

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The defendants specially deny the allegations contained in paragraph three of said complaint, excepting that they specifically admit

that the defendants Everett A. Webster, Martha Webster, Walter T. Webster and Addie N. Webster are the owners of Lot 14, Block 1, and now are and at all times hereinafter mentioned have been in possession of said tract and parcel of land, and specifically deny that said defendants are encroaching or trespassing upon the property or any portion thereof owned by the plaintiff herein, and that they are in possession thereof by reason of their right and title as owners.

III.

The defendants admit the allegations contained in paragraph four, and claim that the estate and interest and right of possession, claimed by the said defendants are by virtue of their right as owners thereof.

Wherefore, defendants demand judgment that said action be dismissed and the plaintiff be decreed to not have any right, title, or interest or claim to the said property as set forth by the allegations of said complaint, or otherwise; and that the plaintiff be forever debarred from asserting or claiming any right therein, and that the said action be dismissed, and defendants have their costs and disbursements herein.

WM. G. OWENS,
*Attorney for Defendants Everett A.
Webster, Martha Webster, Walter T.
Webster and Addie N. Webster.*

STATE OF NORTH DAKOTA,

County of Williams, ss:

Wm. G. Owens being first duly sworn on his oath deposes and says that he is the attorney for defendants Everett A. Webster, Martha Webster, Walter T. Webster and Addie N. Webster, in the foregoing action, that he has read the foregoing Answer and that the said Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 7th, day of October 1918.

M. C. BELL,
Notary Public, Williams County, North Dakota.

My commission expires Nov. 21st, 1922.

[Endorsed:] Filed May 27, 1920.

34 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Amended Answer.

Separate Answer of Eli Kingston and Edna Kingston.

Comes now the above named Defendants and for their Answer to the Complaint in said Action.

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The Defendants specifically deny the allegations contained in Paragraph Three of said Complaint, excepting that he specifically admits that the Defendants Eli Kingston and Edna Kingston, are the owners of Lots 15 and 16 Block one (1) of East Spring Brook, and now is and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said Defendants are encroaching or trespassing upon the property, or any portion thereof owned by the Plaintiff herein, and that he is in possession of such by reason of his right and title as owner, which title and ownership originates from title obtained by one Philander Pollock and subsequent grants, deeds and transfers to this Defendant as appear of record.

III.

The Defendants admit the allegations contained in Paragraph Four and claim that the estate and interest and right of possession claimed by the said Defendant is by virtue of his right as owner thereof, which ownership is claimed through right of title obtained as follows, to wit:

The Northwest Quarter of the Northeast Quarter of Section 18, Township 155 North of Range 99 West.

And from said time maintained residence thereon in compliance with the Homestead Laws of the United States until same was patented to him upon February 28th, 1906, that thereafter and in compliance with the statute of the State of North Dakota, said Philander Pollock as the owner thereof caused to be made and filed in the office of the Register of Deeds of Williams County, a certified plat known and designated as East Spring brook which plat is still of file and of record in said office and covers a portion of the tract known as the Northwest Quarter of the Northeast Quarter of Sec-

tion 18, and that said plat shows and designates the lots hereinbefore described and claimed by the Defendants as their property and that by conveyance in writing to said hereinbefore mentioned property was conveyed by said Pollock as said patentee to Nicholas W. Comfort who conveyed same to Eli Kingston all by written deed and grant of conveyance through said deed of conveyance and other deeds emanating therefrom, all of which are filed in the office of the Register of deeds, Williams County, upon which this Defendant claims his right and title.

IV.

Further answers and as separate defense this defendant re-alleges: on matter heretofore set forth in first cause of action and further alleges:

That prior to 1900 the town was established and known and designated as Springbrook, which town embraced lands in question in this action, and that said town was platted as set forth in 35 first cause of action by Philander Pollock who was the owner and proprietor thereof, and that in 1903 on July 9th, of that year he caused to be filed in the office of the Register of Deeds of Williams County, North Dakota, a plat in which was a certified plat of said town designated as East Springbrook which plat divided a portion of the lands known and designated as the Northwest quarter of the Northeast Quarter of Section Eighteen (18) and which plat divided that certified plat or portion thereof into street, alley and block, which were numbered and designated, and that said lands so platted and divided have since such time been used and occupied street alleys graded and improved and buildings have been erected and constructed on the lots contained in said plat and particularly known as Front Street is within the boundary of land now claimed by the Plaintiff and for more than twenty years the portion of said plat known as Front Street has been used as a public Highway or in fact since 1898 and that since then the hereinbefore described lot which is claimed by the Defendant, the lot has been builded upon, occupied and improved for more than ten years without any claim or right or opposition of the Plaintiff herein, and was so occupied from year to year up to and including the present time, and was so improved by these defendants or their grantors and that the said Defendants and their grantors openly occupied and continued to use for business and residential purposes and the whole thereof of the property described and hereinbefore set forth, and that from the time of settlement of said land under the homestead Laws of the United States up to and including the present time the Plaintiff Railway Company, its officers and agents, had full notice and knowledge of such facts and that notwithstanding the use and occupancy of which was known to the Plaintiff, the said Plaintiff remained silent and has never made any claim of title until the commencement of proceedings for commencement of this action. That fully disregarding the right title claim occupancy or interest this defendant or his grantors the said Plaintiff Company allowed and permitted same to be done used and occupied without any objection or protest.

Further answers, the Defendant alleges that the Plaintiff never at any time caused the plats or any right of conveyance from the Government or otherwise to lands in question under which it claims title to said lands to be filed or recorded in the office of the Register of Deeds of Williams County, North Dakota, nor has any conveyance whatever to said Plaintiff as to the lands described herein been made by the United States Government or otherwise in behalf of the Plaintiff ever been filed or recorded, nor has Plaintiff ever filed with the County Auditor of said Williams County, a map showing the correct location of said right of way or side tracks in said Williams County, owned or occupied by said plaintiff to be filed in the office of the Auditor of Williams County as required by the statute of the State of North Dakota, nor has any conveyance to the premises showing conveyance to the Plaintiff ever been recorded in the office of the Secretary of State, of North Dakota, nor has any of the property claimed by this Defendant been used or occupied by the Plaintiff or any Railway Company as right of way and that by reason thereof and by reason of the right and occupancy of Defendants herein, this Plaintiff has been guilty of Laches and is stopped from claiming any right title or interest to lands hereinbefore described.

WM. G. OWENS,
*Attorney for the Defendants
Eli Kingston and Edna Kingston.*

36 STATE OF NORTH DAKOTA,
County of Williams, ss:

Wm. G. Owens, being duly sworn deposes and says that he is attorney for the Defendants, Eli Kingston and Edna Kingston, in the foregoing action, that he has read the foregoing Amended Answer, and that the said Amended Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS,

Subscribed and sworn to before me this 27th day of April 1920.

GEO. A. GILMORE,
Notary Public, Williams County, North Dakota.

My commission expires, Nov. 28th, 1920.

[Endorsed:] Filed May 27, 1920.

37 STATE OF NORTH DAKOTA,
County of Williams, ss.:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Answer.

Separate Answer of Eli Kingston and Edna Kingston.

Comes now the above named Defendants and for their Answer to the Complaint in said Action

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The Defendants specifically deny the allegations contained in Paragraph Three of said Complaint, excepting that they specifically admit that the Defendant, Eli Kingston is the owner of Lots Fifteen and Sixteen (15 & 16) of Block One (1), East Spring Brook, and now is, and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said Defendant is encroaching or trespassing upon the property or any portion thereof owned by the Plaintiff herein, and that he is in possession of such by reason of his right and title as owner.

III.

The Defendants admit the allegations contained in Paragraph Four and claim that the estate and interest and right of possession claimed by the said Defendant is by virtue of his right as owner thereof.

Wherefore, Defendants demand Judgment that the said action be dismissed and the Plaintiff be decreed to not have any right, title, or interest or claim to the said property as set forth by the allegations of said complaint, or otherwise, and that the Plaintiff be forever barred from asserting or claiming any right therein, and that the said action be dismissed and Defendants have their costs and disbursements herein.

WM. G. OWENS,
*Attorney for Defendants Eli
Kingston and Edna Kingston.*

STATE OF NORTH DAKOTA,
County of Williams, ss:

Wm. G. Owens, being duly sworn deposes and says that he is attorney for the Defendants, Eli Kingston and Edna Kingston, in the foregoing action, that he has read the foregoing Answer and that the said Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 7th day of October, 1918.

JOHN J. MURPHY,
Notary Public, Wms. Co. N. D.

My commission expires Feb. 5th, 1921.

[Endorsed:] Filed May 27, 1920.

38 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District.

(Title as Last Above.)

Amended Answer.

Separate Answer of Emma L. Schartle and Verlie L. Schartle,

Comes now the above named Defendant and for his answer to the Complaint in said Action

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The Defendant Specifically denies the allegations contained in Paragraph Three of said Complaint, excepting that he specifically admits that the Defendants Verlie L. Schartle, is the owner of Lots 17 & 18 Block One (1) of East Spring Brook, and now is and at all times hereinafter mentioned has been in posession of said tract and parcel of land, and specifically denies that said Defendant is encroaching or trespassing upon the property, or any portion thereof owned by the Plaintiff herein, and that he is in possession of such by reason of his right and title as owner, which title and ownership originates from title obtained by one Philander Pollock and subsequent grants, deeds and transfers to this Defendant as appear on record.

III.

The Defendants admit the allegations contained in Paragraph Four and claim that the estate and interest and right of possession claimed by the said Defendant is by virtue of his right as owner thereof, which ownership is claimed through right of title obtained as follows, to-wit:

That the origin, nature and extent of their title thereto, is from one Philander Pollock who prior to 1900 and under the United States Homestead Laws established residence and made improvements upon the lands located in the State of North Dakota and described as follows, to-wit:

The Northwest Quarter of the Northeast Quarter of Section 18, Township 18⁵, North of Range 99, West.

And from said time maintained residence thereon in compliance with the Homestead Laws of the United States until same was patented to him upon February 28th, 1903, that thereafter and in compliance with the statute of the State of North Dakota, said Philander Pollock as the owner thereof caused to be made and filed in the office of the Register of Deeds of Williams County a certified plat known and designated as East Springbrook, which plat is still of file and of record in said office and covers a portion of the tract known as the Northwest quarter of the Northeast quarter of Section 18, and that said plat shows and designates the lots hereinbefore described and claimed by the Defendants as their property and that by conveyance by said Pollock as said patentee to Nicholas W. Comfort and jointly by Pollock and Comfort to Shartle all by written deed and grant of conveyance through said deed of conveyance and other deeds, emanating there from all of which are filed in the office of the Register of Deeds, Williams County, upon which this Defendant claims his right and title.

IV.

Further answers and as separate defense this defendant re-alleges: on matter heretofore set forth in first cause of action and further alleges:

39 That prior to 1900 the town was established and known and designated as Springbrook, which town embraced lands in question in this action, and that said town was platted as set forth in first cause of action, by Philander Pollock who was the owner and proprietor thereof, and that in 1903 on July 9th, of that year he caused to be filed in the office of the Register of Deeds of Williams County, North Dakota, a plat in which was a certified plat of said town designated as East Springbrook, which plat divided a portion of the lands known and designated as the Northwest quarter of the Northeast Quarter of Section Eighteen (18) and which plat divided that certified plat or portion thereof into street, alley and block, which were numbered and designated, and that said lands so platted and divided have since such time been used and occupied as streets,

alleys, and graded and improved and buildings have been erected and constructed on the lots contained in said plat and particularly the premises claimed by this Defendant, and that the Street particularly known as Front Street is within the boundary of land now claimed by the Plaintiff and for more than twenty years the portion of said plat known as Front Street has been used as a public highway or in fact since 1898, and that since then the hereinbefore described lot which is claimed by the Defendant, the lot has been builded upon, occupied and improved for more than ten years without any claim or right or opposition of the Plaintiff herein, and was so occupied from year to year up to and including the present time, and was so improved by these defendants or their grantors and that the said Defendants and their grantors openly occupied and continued to use for business and residence purposes and the whole thereof of the property described and hereinbefore set forth, and that from the time of settlement on said land under the Homestead Laws of the United States up to and including the present time the Plaintiff Railway Company, its officers and agents, had full notice and knowledge of such facts and that notwithstanding the use and occupancy of which was known to the Plaintiff, the said Plaintiff remained silent and has never made any claim of title until the commencement of proceedings for the commencement of this action. That fully disregarding the right, title, claim, occupancy, or interest this defendant or his grantors the said Plaintiff Company allowed and permitted same to be done, used and occupied without any objection or protest.

Further *answers*, the Defendant alleges that the Plaintiff never at any time caused the plats or any right of conveyance from the Government or otherwise to lands in question under which it claimed title to said lands to be filed or recorded in the office of the Register of Deeds of Williams County, North Dakota, nor has any conveyance whatever to said Plaintiff as to the lands described herein been made by the United States Government or otherwise in behalf of the Plaintiff ever been filed or recorded, nor has Plaintiff ever filed with the County Auditor of said Williams County, a map showing the correct location of said right of way or side tracks in Williams County, owned or occupied by said Plaintiff to be filed in the Office of the Auditor of Williams County as required by the statute of the State of North Dakota, nor has any conveyance to the premises showing conveyance to the Plaintiff ever been recorded in the office of the Secretary of State of North Dakota, nor has any of the property claimed by this Defendant been used or occupied by the Plaintiff or any Railway Company as right of way and that by reason thereof and by reason of the right and occupancy of Defendant herein, this Plaintiff has been guilty of Laches and is stopped from claiming any right title, or interest of lands hereinbefore described.

WM. G. OWENS,
*Attorney for the Defendants Emma
L. Schartle and Verlie L. Schartle.*

40 STATE OF NORTH DAKOTA,
County of Williams, ss:

Wm. G. Owens, being first duly sworn deposes and says that he is attorney for the Defendants Emma L. Schartle and Verlie L. Schartle, in the foregoing action, that he has read the foregoing Amended Answer, and that the said Amended Answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 10th, day of Jan. 1920,
GEO. A. GILMORE,

Notary Public, Williams

County, North Dakota.

My commission expires Nov. 28, 1920.

[Endorsed:] Filed May 27, '20.

41 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Eleventh Judicial District,

(Title as Last Above.)

Answer.

Separate Answer of Emma L. Schartle and Verlie L. Schartle.
Comes now the above named Defendants and for their Answer to the Complaint in said Action

I.

Admit the allegations contained in Paragraphs One and Two.

II.

The Defendants specifically deny the allegations contained in Paragraph Three of said Complaint, excepting that they specifically admit that the Defendant, Emma L. Schartle is the owner of Lots Seventeen and Eighteen (17 & 18) of Block One (1) of East Spring Brook, and now is and at all times hereinafter mentioned has been in possession of said tract and parcel of land, and specifically denies that said Defendant is encroaching or trespassing upon the property or any portion thereof owned by the Plaintiff herein, and that she is in possession of such by reason of her right and title as owner.

III.

The Defendants admit the allegations contained in Paragraph Four and claim that the estate and interest and right of possession,

claimed by the said Defendant is by virtue of her right as owner thereof.

Wherefore, Defendants demand Judgment that the said action be dismissed and the Plaintiff be decreed to not have any right, title or interest or claim to the said property as set forth by the allegations of said Complaint, or otherwise, and that the Plaintiff be forever debarred from asserting or claiming any right therein, and that the said action be dismissed and Defendants have their costs and disbursements herein.

WM. G. OWENS,
*Attorney for Defendants Emma L.
Schartle and Verlie L. Schartle.*

STATE OF NORTH DAKOTA,
County of Williams, ss:

Wm. G. Owens being duly sworn deposes and says that he is attorney for Defendants, Emma L. Schartle and Verlie L. Schartle, in the foregoing action; that he has read the foregoing answer and that the said answer is true to the best of his knowledge, information and belief.

WM. G. OWENS.

Subscribed and sworn to before me this 7th, day of October, 1918.

JOHN J. MURPHY,
Notary Public, Wms. Co., N. Dak.

My commission expires Feb. 5th, 1921.

[Endorsed:] Filed May 27, 1920.

42 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, Eleventh Judicial District,

(Title as Last Above.)

Notice of Trial.

To the above-named Defendants:

Take Notice that the above entitled action will be brought on for trial at the next regular jury term of the above named court, scheduled to convene at Williston, N. D. on the 23rd. day of June, 1919.

Dated May 16, 1919.

MURPHY & TONER,
Attorneys for Plaintiff.

Service of the foregoing notice of trial this 19 day of May, 1919
is hereby admitted.

WM. G. OWENS,

*Attorneys for Defendants Steinke, Websters,
Graichen, Shartle, Kingston and Jacobson.*

CRAVEN & CONVERSE,

*Attorneys for Defendants Spring Brook State Bank,
Spring Brook Trading Company, and F. M. Craig.*

Note of Issue.

To the clerk of the above-named court:

Please place the above entitled action upon the calendar of said court for trial at the next regular jury term thereof, scheduled to convene at Williston, N. D. on June 23, 1919.

Dated May 16, 1919.

MURPHY & TONER,

Attorneys for Plaintiff.

Issue of Law and Fact.

Last pleading served October 10, 1918.

MURPHY & TONER,

Grand Forks, N. D.,

Attorneys for Plaintiff.

PALMER, CRAVEN & CONVERSE,

WM. G. OWENS,

Williston, N. D.,

Attorneys for Answering Defendants.

[Endorsed:] Filed May 25, 1919.

43 STATE OF NORTH DAKOTA,

County of Williams, ss:

In District Court, Fifth Judicial District.

THE GREAT NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING BROOK STATE BANK,
a Corporation; Henry Graichen, Christie Graichen, Emma L.
Shartle, Verlie L. Shartle, Everett A. Webster, Martha Webster,
Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston,
Elizabeth Comford, Spring Brook Trading Company, a Corporation;
J. L. Kingston, Daniel Jacobson, Frank M. Craig, Nancy
Craig, Charles F. Bellet, Alice Bellet, Alva Ulrich and Hattie
Ulrich, Defendants.

TRANSCRIPT.

The above entitled action having come on for trial before the court, the Honorable Frank E. Fisk, Judge, on the 26th day of May,

1920, in the chambers thereof at Williston, North Dakota, Messrs. Murphy & Toner appearing on behalf of the plaintiff and the defendants Springbrook State Bank, Springbrook Trading Company, Frank M. Craig and Nancy Craig and each of them *appeared* in person and by Craven & Converse, represented by Mr. Craven, their attorneys; and defendants Vivian H. Steinke, Paul E. Steinke, Henry Graichen, Emma L. Shartle, Verlie L. Shartle, 41 Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston and Daniel Jacobson *appeared* in person and by Wm. G. Owens, their attorney, and the following proceedings were had:

Mr. Toner: Plaintiff offers in evidence Exhibit A which is a plat of East Springbrook showing the claimed right-of-way, and station grounds of the railway company at that point, also the platted part of East Springbrook, and showing in green the encroachments or alleged encroachments which existed at that time upon this strip of station grounds. We will show later on that some of them have been removed.

Plaintiff offers in evidence Exhibit B, which is the map and plat filed by the St. Paul, Minneapolis and Manitoba Railway Company, first with the Land Office at Minot and then with the Secretary of the Interior selecting the right-of-way over the route through Springbrook and elsewhere, also showing its approval by the Secretary of the Interior, and thereby the granting of the right-of-way under the Act of 1875.

The plaintiff offers in evidence Exhibit C. Exhibit C is a map and plat filed by the St. Paul, Minneapolis and Manitoba 45 Railway Company under the Act of 1875 claiming station-grounds at Springbrook, also showing thereon the filing with the land office at Minot and the filing with the Department of the Interior and the approval thereof by the Department of the Interior, thereby granting station-grounds under the Act of 1875.

Exhibit D is a certified copy of a letter written by the Secretary of the Interior to the Commissioner of the General Land Office approving proofs and papers filed by the St. Paul, Minneapolis and Manitoba Railway Company in connection with this right-of-way and station-grounds under the Act of 1875.

Mr. Craven: What is the purpose of that exhibit; I can't understand what it is for; it is written in 1880.

Mr. Toner: The filing of the articles of incorporation.

Mr. Craven: You mean it is showing that they complied with the necessary statutes so as to bring the St. Paul railroad under that Act, within the guarantees in that Act?

Mr. Toner: Yes.

Mr. Craven: We have no objection if it is for that purpose.

Mr. Toner: That is all.

46 Mr. Toner: Plaintiff offers in evidence Exhibit E which is a certified copy, certified by the Secretary of State of the State of North Dakota of a deed from the St. Paul, Minneapolis — Manitoba Railway Company to the Great Northern Railway Company of all the lines of railway of the St. Paul, Minneapolis and

Manitoba Railway Company in the State of North Dakota including the right-of-way and station grounds involved here, if they were owned by the St. Paul, Minneapolis and Manitoba Railway at that time, the date being 1907.

Mr. Toner: The plaintiff offers in evidence Exhibit F, which consists of, in addition to the certificate, eight instruments including one other certificate, namely, application to enter homestead relinquishment of such homestead entry as to the Northwest quarter of the Northeast quarter of Eighteen, 155, 99; testimony of the witness, Frederick given on making final proof under the balance of such homestead entry; testimony of the witness Swinley given likewise and the testimony of the claimant Philander Pollock for the same purpose at the same time, and finally affidavit required of homestead claimants in the same connection; then the certified copy of the patent issued by the United States to Philander Pollock covering the Northwest of the Northeast of Eighteen, 155, 47 99, and a certificate about the same as to its being a copy.

W. P. STEVENSON called as a witness on behalf of the plaintiff, and being duly sworn, testified as follows:

Direct examination.

By Mr. Toner:

Q. I show you Exhibit A, Mr. Stevenson, and ask you if that is a plat or map prepared by you?

A. It is, Yes, Sir.

Q. And, generally speaking, what does it purport to show?

A. The center line of the Great Northern Railway, and its right-of-way, station-grounds, buildings and so forth.

Q. Do you know where the town of Springbrook or East Spring Brook is located?

A. I do, Yes, Sir.

Q. And does this plat, Exhibit A cover the territory in that immediate vicinity?

A. It does, Yes, Sir.

Q. Does it show the platted portion of East Springbrook in so far as the records show it?

A. It does, Yes, Sir.

Q. Now, about how long ago was that plat made, Mr. Stevenson, approximately?

A. This one happens to be made in 1914 since the valuation under government regulation was started. This is an exact copy, however, of a map of twenty or twenty-five years—

48 Q. Did you place the green marks on this plat here that I indicate with the apparent limits of the town of East Springbrook?

A. Yes, Sir.

Q. What does this indicate?

A. Encroachments on our right-of-way and station-grounds.

Q. Those green patches indicate structures or buildings do they?

A. Well——

Q. (Interrupting.) Did at the time they were put there?

A. Yes, Sir.

Q. And at the time those were put there, there were buildings at the points indicated in green, were there?

A. There was, Yes, Sir.

Q. In addition to the places indicated in green there are other encroachments on the claimed station-grounds at that point, are there not, by the lots themselves?

A. Yes, Sir.

Q. The only attempt that is made to show in green is where there are buildings on the grounds?

A. Absolutely, Yes, Sir.

Q. Are the station grounds claimed also shown on this map?

A. Yes, they are indicated on there, Yes, Sir.

Q. Do the encroachments that your map shows and that exist in fact on the ground, all occur within any certain subdivision of government survey down there?

A. I don't know as I understand your question, Mr. Toner.

49 Q. Can you give us a description of the tract of land in which all the encroachments occur, by the government survey?

A. Northwest quarter of the Northeast quarter of Section eighteen.

Q. And that is the only subdivision in which there are any encroachments involved at all, is there not?

A. Yes, Sir.

Q. And as far as the recorded plat of East Springbrook is concerned, is it true or otherwise that it is wholly included within this same subdivision of the government survey?

A. It is included in that wholly.

Q. You haven't found that there is any plat known, recorded plat known as Springbrook, have you?

A. I haven't been able to locate any.

Q. What is the width of the right-of-way claimed by plaintiff at this point in controversy? As shown on your map here?

A. One hundred feet on each side of the center line.

Q. Two hundred feet in all?

A. One hundred feet for station-grounds, Yes, Sir.

Q. No,—Just listen to the question: I say Two hundred feet in all, right-of-way?

A. Two hundred feet in all for right-of-way, Yes, Sir.

50 Q. Does the plaintiff claim station grounds at the point in controversy also?

A. Yes, Sir.

Q. How wide are they?

A. One hundred feet.

Q. On which side of the right-of-way proper?

A. On the south side.

Q. And these station grounds run along through this Northwest of the Northeast of eighteen, we have been talking about, do they?

A. They do, Yes, Sir.

Q. Therefore, at this point on the Northwest of the Northeast where East Springbrook is platted, the plaintiff railway company claims right-of-way and station grounds two hundred feet wide on the south side?

A. Yes, Sir.

Q. And does the yellow line that appears on this plat indicate the station-grounds of Springbrook in their entirety?

A. Yes, Sir.

Q. Have you ever surveyed these station grounds?

A. I have, Yes, Sir.

Q. There is a reservoir or spring there at Springbrook, is there?

A. There is, Yes, Sir.

Q. A place where water is stored and softened?

A. Yes, Sir.

Q. Is this portion of the station-grounds down here where the reservoir is fenced?

A. Partly, Yes, Sir.

Q. And has work been done there in connection with preparing a place for storing water, a regular softening plant, laying pipe-lines and so forth?

A. Yes, Sir.

Q. I show you Exhibit G and ask you if you know what that is?

A. That is also a map of Springbrook.

Q. Was that Exhibit G made at a later date than Exhibit A?

A. Yes, Sir.

Q. And has it been corrected down to the present time?

A. It is corrected to date, Yes, Sir.

Q. With reference to the encroachments referred to on Exhibit A I will ask you whether or not any of those encroachments have been removed?

A. There have, Yes, Sir.

Q. Can you indicate what encroachments have been removed and what ones remain today?

A. I can, Yes, Sir.

Q. Please do so.

A. The building shown on Exhibit A in Block seven, Lot One in Block Seven has been removed. The building that was on Lot Three, Block Eight has been removed. There is a water-closet fastened to the lumber shed there has been removed and there was some change made in the fence that existed.

Q. Are those all the changes, Mr. Stevenson?

A. Yes.

Q. Is the dwelling on Lot Sixteen, Block One still there?

A. Yes, Sir.

Q. Is the building on Lot One, Block One still there?

A. It is, Yes, Sir.

Q. And the lumber shed in the large triangle, Lot One, Block Eight still remains so far as the shed proper is concerned; otherwise the conditions are the same today as they were when the Plat Exhibit A was made, are they?

A. Yes, Sir.

Q. With the exceptions you have noted?

A. Yes, Sir.

Q. Now, did you make any survey of the station grounds, part of the station-grounds and part of the right of way of Spring Brook for the purpose of staking them out as commercial lots for the Great Northern Railway Company?

A. I did, Yes, Sir.

Q. And did you, at some time, discover that certain of those buildings were upon property claimed by the railway company?

A. I did, Yes, Sir.

Q. Have you any definite idea when that was?

A. It must have been early in the year of 1917.

Q. And generally speaking, are encroachments like that discovered until they go upon grounds to make a survey?

Mr. Craven: Objected to as irrelevant and immaterial, speculative as to the conditions there -- as to the conditions and discovery in this particular ground.

The Court: Sustained.

Mr. Toner:

Q. What is your business with the Great Northern Rail-
53 way Company?

A. Civil Engineer.

Q. And does your department have anything to do with the question of encroachments?

A. Yes, Sir, as much as we are supposed to report them if we find them.

Q. How long have you been with the Great Northern on this particular territory including Springbrook, approximately?

A. Ten and a half years.

Q. What department did you say you were with?

A. Engineering.

Q. Is it or is it not the only department which makes surveys and measurements in connection with the railway company?

A. It is, Yes, sir.

Q. Can you state whether or not it is the department which must discover encroachments if they are discovered?

A. It is, Yes, Sir.

Mr. Craven: Objected to as calling for a conclusion of the witness, and move to strike it out until the objection gets in.

The Court: Over-ruled.

Mr. Toner:

Q. At this point, Springbrook, you did discover what you thought were encroachments upon the right of way and station grounds claimed by the plaintiff at that time in 1917, as you remember it?

A. I did, Yes, Sir.

Q. And you did report them, did you not?

54 A. I made a survey and reported them at once.

Q. And did you at that time when you were making the survey, have occasion to communicate the fact of such encroachments to the people living in Springbrook?

A. Yes, I did.

Q. Now, I want to ask you, Mr. Stevenson, I will ask you first, if the center line of the railway, of the Great Northern Railway Company today is located where it purports to be located on Exhibit A?

A. It is, Yes, Sir.

Q. Then I will ask you whether or not the proposed location of the southern line of railway of the St. Paul, Minneapolis and Manitoba Railway Company as shown on Exhibit B at this particular point of Springbrook we are talking about in the Northwest of the Northeast of Eighteen is identical in location with the center line of the railway of the Great Northern Railway Company as shown on Exhibit A?

A. Yes, Sir, the locations are exactly the same.

Q. Then I will ask you if the station grounds of the Great Northern Railway Company as they exist at Springbrook today are identical and lie on the location with the station grounds shown by you on the plat Exhibit A and as surrounded by yellow lines?

A. Yes, Sir.

Q. Then I will ask you if the station grounds shown on 55 the plat Exhibit A are identical in area and location with the station grounds shown on Exhibit C and claimed by the St. Paul Minneapolis and Manitoba Railway Company by the filing of this plat, Exhibit C?

A. They are identical; Yes, Sir.

Q. In other words, the location of the right of way of the railway shown on Exhibit B and the location of the station grounds of the railway shown on Exhibit C are the same right of way and station grounds which appear today on Exhibit A?

A. They are, Yes.

Q. Now, as far as the encroachments we have been talking about and that you have shown on your plat, do they in any way interfere with the original right of way at all, the two hundred foot strip, one hundred feet on each side?

A. No, Sir, they do not.

Q. Is it a fact that they are all confined to this one hundred foot strip station grounds?

A. It is a fact, Yes, Sir.

Q. And that hundred foot strip in so far as it is involved here and in so far as the encroachments are concerned is wholly within the Northwest of the Northeast of eighteen, 155, 99, is it not?

A. Yes, Sir.

Q. Now, Mr. Stevenson, the pleadings or some of them in this action allege or show a grading and a street known as Front Street.

56 Will you indicate on the plat where such a street as Front Street would be if there is one?

Mr. Toner:

58 Q. And during this period that railway company has been carrying freight and passengers over this road at this point?

A. It has, Yes, sir.

Q. And do you know whether or not it has been graded and they have improved the same—laid steel and ties thereon as circumstances required?

A. Yes, sir, it has.

Q. And took earth from the right of way at that point?

A. It did, Yes, sir.

Q. Cut the grass on it?

A. Yes, Sir.

Q. And during this period did I understand you to say that you platted commercial sites of these station grounds and right of way at this point?

A. That is correct, I did, Yes, Sir.

Q. And while doing that did you come in contact with some of those encroachments?

A. I did, Yes, Sir.

Q. They had been discovered prior to that, however, had they not?

A. They had, Yes, Sir.

Q. Are any of the lots so platted in use at Springbrook by commercial houses?

A. They are, Yes, Sir.

Q. And as far as the station grounds is concerned I believe you state there was a reservoir located on part of it?

A. That is correct.

Q. And is there a water-softening plant located thereon also?

A. There is, Yes, Sir.

59 Q. And they are in part fenced?

A. Yes, Sir.

Q. And is there a pipe system arranged that the water so stored and softened is carried up on the right of way proper to be delivered to the engines for use?

A. That is true, Yes, Sir.

Q. And for that purpose a pipe-line has been laid in the station grounds and across the right of way?

A. Yes, Sir.

Q. And this system of water gathering and softening, and the water that is used is in use right along by the railroad in their operation?

A. Constantly, Yes, Yes.

Q. Now, does the plat, Exhibit A in a general way show the necessities that the railway company have to place on its station grounds and right of way at this point in the line of improvements, fixtures and different things?

A. It does; it shows it in their entirety.

Q. Now, is it a fact that a part of the lots included in the blocks One, Eight and Seven of East Springbrook as shown by the plat

which is filed of that town, encroach upon or are superimposed upon the station grounds as you have shown them on Exhibit A?

A. Yes, Sir, that is true.

60 Q. Hence, I take it that a portion of the lots in these blocks One, Eight and Seven are identical in location with the portion of the station grounds upon or over which they are imposed, is that right?

A. That is true, Yes, Sir.

Q. The plat which was filed, I presume you have examined it, have you not?

A. I have, Yes, Sir.

Q. It failed to recognize, in so far as the characters on the plat itself is concerned, the existence of either the right of way or the station grounds at that point?

Mr. Craven: Objected to as calling for a conclusion of the witness; the plat itself is the best evidence.

The Court: Sustained.

OLE SKRATASS, called as a witness for the plaintiff, and being duly sworn, testified as follows:

Direct examination.

By Mr. Toner:

Q. Where do you live, Mr. Skratass?

A. I live at Minot.

Q. What is your business?

A. I am right of way agent of the Great Northern Railway Company.

Q. You are familiar with the controversy involved in this action, are you not?

A. Some, Yes.

61 Q. Did you in the spring of 1917 have a talk with the principal defendants in this suit who had encroachments or were claimed to have encroachments on the station grounds at Springbrook and tell them about it, and tell them to get off?

Mr. Craven: Objected to unless he designates whom he means. I would rather have it that way.

The Court: Over-ruled.

A. I served the notices to vacate.

Mr. Toner:

Q. You talked with them at the same time?

A. I talked with them at the same time.

Mr. Craven: Move to strike out the witness' statement "I served notices to vacate as a conclusion of the witness and that the notice itself is the best evidence of that fact, of what it contains."

Mr. Toner: We resist the motion on the ground I asked the wit-

ness if he told them to get off. We are not interested in the notice at all.

Mr. Craven: I have no objection if that is the purpose of the witness to give what he told the defendants; I only object to it as giving the contents of the notice. As I understand, that part of it is stricken out?

The Court: Yes.

62 Q. Did you have a talk on that subject with the gentleman sitting beside you there?

A. I don't think I did.

Mr. Craven: Let the record show that the gentleman referred to is Mr. Widman.

A. I don't remember serving a notice on Mr. Widman.

Mr. Toner:

Q. That is not what I asked you.

A. Well, I wouldn't have talked to anybody but those I served the notices to. I may have had a conversation with Mr. Widman at that time, but I don't remember; I can't recall it.

Q. You couldn't swear to it?

A. No.

Q. Do you remember seeing Mr. Steinke, Mr. Craig and Mr. Jacobson?

A. I remember those names; whoever I made the return of serving notice, I discussed the matter with them.

Q. Springbrook is a small place, is it not?

A. It is a small place.

Q. And you discussed the matter generally in town that day, did you not, when you were there that day?

Mr. Craven: Objected to unless he confines his talk and discussions in presence of the defendants.

The Court: Sustained.

Cross-examination.

By Mr. Craven:

63 Q. How long have you been right of way agent for the plaintiff company?

A. I have been right of way agent since 1900.

Q. And have you had charge of this particular division of the road which passes through Springbrook as right of way agent since that time?

A. I haven't got charge of any divisions; my work isn't that way; it is only in buying certain tracts which they require, to look after certain matters which may come up from time to time.

Q. Yes, but my question is as to right of way agent. How long have you had supervision as right of way agent over this particular line of road that passes through Springbrook?

A. Well, it has been more or less in the territory where I have been working since that time—1909.

Q. And you have been over it more or less each and every year during all that time?

A. Yes, sir, going by on train.

Q. Did you stop there sometimes during those years?

A. I believe that is the first time I stopped there when I served those notices; I have driven through that town in automobiles. I stopped there once before on a matter outside of the town.

Q. Took the train at Springbrook—got off at Springbrook
64 that time, did you?

A. Yes.

Q. How long ago was that conversation?

A. The first time?

Q. Yes.

A. Oh, that must have been in 1911, I think, but that was on a deal out in the country.

Q. When was it you say that you told them to vacate?

A. If I am allowed to look at my return of service; I couldn't tell you the date off-hand; it is along in the spring of 1917.

Q. Can you refresh your memory by looking at some memorandum you made at that time and tell us the exact date?

A. The only memorandum I have is my return of service.

(Witness looks at paper.)

Q. After refreshing your recollection by any memorandum that you may have made about that time can you tell us now the date that you so told them to vacate?

A. On May first, 1917.

Q. When you say you told them to vacate who do you refer to, which of the defendants?

A. To Henry Graichen, Alva Ulrich, Ely Kingston, D. Jacobson, F. M. Craig and Paul Steinke.

Q. And that is all?

65 A. Yes, sir, that is all, all I could find I guess.

Q. And each of those defendants you say that you told to so vacate had structure encroachments which you claimed was on the station grounds proper property?

A. Yes, sir.

Q. The structures generally consisted of what?

A. They consisted of buildings, frame buildings.

Q. And some of those buildings were two story, were they?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not proper cross examination.

The Court: Overruled.

A. Well, I think one was two story building, that hotel.

Mr. Craven:

Q. The hotel building was a two story building?

Mr. Toner: Same objection.
The Court: Overruled.

A. Yes.

Mr. Craven:

Q. At Springbrook, at and prior to that time, did the plaintiff railway company maintain a depot?

A. Yes, sir.

Q. And kept an agent there.

66 Mr. Toner: Objected to as not proper cross examination and immaterial.

The Court: Over-ruled.

A. I don't know as to the agent; there was an agent there at that time; I couldn't say how long previous to that time they had had an agent there.

Mr. Craven:

Q. How far, approximately, from this so-called encroachments that you speak of is this depot located?

Mr. Toner: Objected to as immaterial and not proper cross examination.

The Court: Over-ruled.

A. I never measured it, but I should judge it would be two hundred and fifty feet; I couldn't say, I never measured it.

Mr. Craven:

Q. The encroachments that you speak of, and each of them, was in plain sight so that anyone looking southward at the depot passing along the right of way proper at that point could see the encroachments, couldn't they?

Mr. Toner: Objected to as calling for a conclusion of the witness, not a statement of fact, not proper cross examination.

The Court: Over-ruled.

67 & 68 A. Yes, sir, you could see the encroachments; they couldn't tell whether it was on the right of way or whether it was outside by looking at it, unless you measured—I couldn't.

Mr. Craven:

Q. I am not asking you that; I am asking you as to what they could see. At the time that you say you discovered these encroachments were on what you now claim as the station grounds these several buildings that constituted the encroachments was several years old, wasn't they, at that time?

Mr. Tener: Object to the question in the first place as unintelligible and entirely too complex. I object to it as a mis-statement of the witness' evidence that he ever discovered any encroachments himself; not proper cross examination.

The Court: Over-ruled.

A. I didn't discover the encroachments.

Mr. Craven:

Q. My question is, Mr. Agent——

Mr. Toner (interrupting): That is part of it, too. I object to counsel asking any further compound questions, if he insists that the tail-end of his question, and that the rest of it don't go in——

The Court: Go ahead.

Mr. Craven: Strike out my part of the question.

69 & 70 Q. You stated in your examination that you discovered these encroachments on May 1st, 1917? Isn't that right?

Mr. Toner: Objected to as a mis-statement of the witness' evidence.
The Court: Over-ruled.

A. I didn't state that.

Mr. Craven:

Q. We will get at it: You saw them on that date, didn't you?
A. Yes, sir, I saw them on that day.

Q. Do you mean to say that that was the first time that you seen these particular buildings upon that ground?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. I have seen them before.

Mr. Craven:

Q. About how long before that date did you first see these buildings upon that ground?

A. I can't tell; in fact——

Q. (Interrupting.) Approximately how long?

A. I can't tell that; I couldn't swear to any certain time I seen those buildings; I pass by there a hundred times and see those buildings and never think of it. My attention was first called to 71 those buildings by these notices sent to me from St. Paul.

Q. Never mind the notices. These encroachments and substantially all of them were to your knowledge erected upon these lots at least five to ten years before the time that you told those people to get off, as you say?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, again a compound question, two questions, improper cross examination, immaterial, what knowledge this man had.

The Court: Over-ruled.

A. I couldn't judge by the looks how old they were.

Mr. Craven:

Q. Generally, what is your duties?

A. My duties is to buy land and get town-sites and sell again, whatever they have for sale in these town-sites.

Q. You are the party who procures right of way and townsites and depot grounds, are you?

A. Yes, sir.

Q. Isn't it a part of your duties also to ascertain and report encroachments upon right of way or station grounds that you may have knowledge of?

A. I never had any instructions to that effect.

Q. Have you ever performed that kind of duty?

72 A. After they have discovered it, I have performed the duty of trying to get them off.

Redirect examination.

By Mr. Toner:

Q. Mr. Skratass, referring to the particular buildings that counsel is talking about that we have said here by virtue of these blue-prints and plats are on the station grounds, I ask you if, of your own knowledge, without having been told by anyone, without having these plats or maps, if today by looking at those buildings you can tell whether they are on the station grounds or not, right now, today?

Mr. Craven: Objected to as irrelevant and immaterial.

The Court: Over-ruled.

A. No, sir, I can't tell where they were by looking at them.

W. P. STEVENSON, recalled for further cross examination, testified as follows:

Further cross-examination.

By Mr. Craven:

Q. You stated that you were civil engineer for this road on this division which passes through Springbrook for some ten and a half years, is that right?

A. That is correct, Yes, sir.

73 Q. Are there other men on that division and under you or are you the head of the division, that is, the civil engineer part of it?

A. I have a certain territory over which I have charge.

Q. And that would include the territory that Springbrook or East Springbrook is located in?

A. That is included in that, Yes.

Q. And that condition has existed for how long back?

A. For ten and a half years.

Q. And you have, you say, other engineers under you?

A. I have, Yes, sir.

Q. Now, during that ten years' period your department, whether by yourself or the men under you, made several surveys around East Springbrook?

A. We did, Yes, sir.

Q. Who was at the head of the department prior to you that is, the civil engineer department for that division?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. Well, there was a man by the name of J. D. Knowles, a man by the name of G. S. Elston, a man by the name of Joseph Flynn, all three of them.

Q. You say that you you-self compiled Exhibit A, that 74 is the plat which Mr. Toner introduced?

A. Yes, sir.

Q. And you did that in 1914?

A. Well, I testified that this particular map was made in 1914.

Q. That is what I mean.

A. It is a copy of one that has been in existence for a long time except that they make corrections.

Q. Did you make a survey upon the ground at the time you made Exhibit A or did you take it from some previous plat and survey that had been made?

A. There was a re-survey made.

Q. And you conducted that re-survey yourself?

A. I did not, No, Sir.

Q. Who did?

A. I don't know.

Q. And that re-survey by whosoever conducted was made in 1914, was it?

A. Somewhere around that time, Yes, Sir; that is the time the re-survey was ordered.

Q. When you stated in your direct examination that Exhibit A was prepared by you what do you mean by that, do you mean that you made the plat from the field notes that some other surveyor furnished you, is that it?

A. No, Sir.

Q. What do you mean?

A. That in my own territory I check up the re-surveys as made by the government men and also by outside men who were 75 employed at the time the re-survey was made and I check up their work, and made up the maps on the territory over which I have charge.

Q. Now I understood you to state in your direct examination that while this was made as you state in 1914, that it was a copy of a map that was made prior to that time?

A. That is correct; Yes, Sir.

Q. Could you tell us about when that first map was made that this is a copy of, this Exhibit A is a copy of?

Mr. Toner: Objected to as immaterial.
The Court: Over-ruled.

A. Well, I couldn't tell you, No.

Mr. Craven:

Q. When you stated in your direct examination that Exhibit A showed the platted part of Springbrook so far as the records showed it, what records had you reference to?

A. The records on file here in this building.

Q. That is, you mean the record of the plat of Springbrook as filed in the office of the register of deeds?

A. Yes, Sir, I say that.

Q. When was the first time you saw that?

Mr. Toner: Objected to as immaterial.

76 The Court: Over-ruled.

A. The first time I recall having seen it was in 1917.

Mr. Craven:

Q. Is Exhibit A in the same condition now in all particulars as it was in 1914 when you prepared it?

Mr. Toner: Objected to as assuming facts not in evidence, a mis-statement of this witness' evidence.

The Court: Over-ruled.

A. No, Sir, it is not.

Mr. Craven:

Q. In what particular has it been changed?

A. As to certain encroachments that exist.

Q. When was the survey of those sites that is shown on Exhibit A made?

A. In 1918.

Q. When was the notations on Exhibits A made during the so-called encroachments you speak of?

A. When were they put on the map, is that your question?

Q. Yes.

A. Sometime during the summer of 1917.

Q. I see on Exhibit A several elevator sites showing elevator buildings, I presume; I presume that survey was made prior to the time that those buildings were so erected, and for those buildings, by your department, is that true?

A. I don't understand your question.

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. The question is in such complex form I don't know as I can answer it; I don't know as you mean what surveys were made, if directly applicable—

Q. (Interrupting.) The elevator company applies to the railroad company for sites. Upon the receipt of that application by the railroad company did not the railroad company have your department or some engineering department of its company make a survey for those elevators?

Mr. Toner: Objected to as assuming facts not in evidence and calling for a mere conclusion of the witness.

The Court: Over-ruled.

A. No, Sir.

Mr. Craven:

Q. Now, you spoke of a softening plant, water softening plant. Whereabouts is that located on Exhibit A?

A. You wish me to point it out to you?

Q. Yes, please.

(Witness complies.)

Q. No part of that water softening apparatus is within the platted portion of Springbrook or anywhere near it, is it?

A. No, Sir.

Q. Outside of the two hundred feet of right of way proper
78 what, if any structures, buildings or improvements has the railroad company ever had upon any of the lots or blocks of East Springbrook as originally platted and as shown by the map you seen in the register of deed's office?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not within the issues, and further, it is assuming they are located on the lots in Springbrook and still within the right-of-way.

The Court: Over-ruled.

A. I don't know of any.

Mr. Craven:

Q. And what, if any structures or improvements of any kind has the railroad ever had upon any of the streets and alleys of Springbrook, that is, outside of your two hundred foot right of way?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not within the issues.

The Court: Over-ruled.

A. I don't know of any.

Mr. Craven:

Q. I notice on Exhibit A there is indicated certain figures in the line or on the lines of the several buildings or structures
79 which you claim so encroaches upon the right of way. What do those figures so placed upon Exhibit A indicate?

A. Dimensions.

Q. That is, the dimensions of each of the structures in feet, is it?
A. In feet, or decimal parts thereof, Yes, Sir.

Q. And also there is indicated upon Exhibit A words "dwelling-house," "lumber shed and office," "hotel" and so forth, at or near the so-called encroachment structures respectively; I suppose that indicates the character of the structure or character of the building, whether it is dwelling, lumber yard office or hotel or what?

A. Yes, it is indicative of what I found the buildings were being used for at the time.

Q. And at that time you made the measurements of the different buildings yourself, did you, or your assistant?

A. I personally happened to have made this one.

Q. Now we will take up the dwelling house, for instance: How high is that dwelling house, approximately?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not proper cross examination.

The Court: Over-ruled.

A. If I may understand your question—how do you mean, how high?

Mr. Craven:

80 Q. I mean it in the ordinary sense—how many stories is it about, one, or one and a half, or what?

Mr. Toner: Same objection.

The Court: Over-ruled.

A. We term it a one story building.

Mr. Craven:

Q. Frame structure?

Mr. Toner: Same objection.

The Court: Over-ruled.

A. Yes, Sir.

Mr. Craven:

Q. Built on a permanent foundation?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Yes, it has a foundation.

Mr. Craven:

Q. When you first viewed it did that dwelling have the appearance of being built for a considerable number of years, or otherwise?

Mr. Toner: The same objection.

The Court: Over-ruled.

Mr. Craven:

Q. I am speaking of the dwelling house on Lot sixteen, Block one.

A. Yes; I think it had been there—

81 Mr. Craven:

Q. Now, coming to Lot One, Block One, the so-called encroachment there is a large shed building, is it not?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Yes, Sir, it is a frame shed.

Mr. Craven:

Q. And that is how many stories?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. I would say one-story building.

Mr. Craven:

Q. Frame?

A. Frame, Yes, Sir.

Mr. Toner: The same objection.

The Court: Over-ruled.

Mr. Craven:

Q. And is that building also built on a permanent foundation?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. As to that I am unable to say.

Mr. Craven:

82 Q. When you first seen that shed or warehouse, what it is, you may state whether or not that then had the appearance of having been built several years?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. I don't know whether it was there several years or not; it had been there for some time.

Mr. Craven:

Q. Coming to Lot Three, Block Eight, the structure indicated as an encroachment, what was that building, and what is that that is marked there to show what it was—I can't read it.

A. Ware-house.

Q. Was that a frame building?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. It was.

Mr. Craven:

Q. How high a building was that?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. One story, as I recall it.

Mr. Craven:

Q. Was that built upon a permanent foundation?

Mr. Toner: The same objection.

Mr. Craven:

Q. Or otherwise?

The Court: Over-ruled.

83 A. I don't know, I am sure.

Mr. Craven:

Q. You may state whether or not that building when you first seen it, had the appearance of having been erected for several years?

Mr. Toner: Same objection. Further objection calling for a mere guess and conclusion of the witness.

The Court: Over-ruled.

A. Yes, I think it had.

Mr. Craven:

Q. Taking the buildings on Lots One and Two, Block Eight which is marked upon your plat as "lumber shed and office," is that office building one story or more?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. One story, Yes, Sir.

Mr. Craven:

Q. And frame?

Mr. Toner: The same objection.
The Court: Over-ruled.

A. Yes.

Mr. Craven:

Q. And built upon a permanent foundation, is it?

Mr. Toner: The same objection.
The Court: Over-ruled.

84 A. It was built on some sort of a foundation.

Mr. Craven:

Q. And when you first seen that office building you may state whether or not it then had the appearance of having been built several years?

Mr. Toner: The same objection.
The Court: Over-ruled.

A. I am not able to say about that because it is kept in good repair and painted. I don't know whether it was a new or an old one.

Mr. Craven:

Q. The lumber shed, that is a frame shed, is it?

Mr. Toner: The same objection.
The Court: Over-ruled.

A. Yes, Sir, that is a frame shed.

Mr. Craven:

Q. And I suppose an ordinary one-story lumber-shed such as is ordinarily used in lumber yards in this country?

Mr. Toner: The same objection.
The Court: Over-ruled.

A. I have seen several similar to it.

Mr. Craven:

Q. At that time did that shed have the appearance to you as having been erected several years?

Mr. Toner: The same objection.
The Court: Over-ruled.

A. Yes, I think it had been there some time.

Mr. Craven:

Q. This lumber shed at that time was enclosed by a fence, was it?

A. Yes, Sir.

Q. Now, calling your attention to the structure on Lot Three and Four, Block Seven marked hotel; that is a frame structure, is it?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Yes, Sir.

Mr. Craven:

Q. And how high?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. What we term two stories.

Mr. Craven:

Q. Built upon permanent foundation?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. It is built on a foundation, Yes, Sir.

Mr. Craven:

86 Q. When you first seen that building you may state whether or not it had the appearance to you as having been erected several years?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Yes, sir, it did.

Mr. Craven:

Q. How long have you known that hotel?

Mr. Toner: The same objection, not proper cross examination.

The Court: Over-ruled.

A. For about eight years, I think.

Mr. Craven:

Q. And it always stood during those eight years at the same point and place where it stood when you took the measurements as you stated you did?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Yes, I would say that it had.

Mr. Craven:

Q. Now, the structure on Lot One, Block Seven and which you claim to encroach upon the grounds of the railroad, what is that building as indicated upon the plat there?

A. It was a grocery store.

87 Q. How large a building was that?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not proper cross examination, not within the issues.

The Court: Over-ruled.

Mr. Craven:

Q. That is, I mean how high?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. As I recall it, it was a one-story building.

Mr. Craven:

Q. Frame?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Yes, sir.

Mr. Craven:

Q. Built upon a permanent foundation?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. It had a foundation, yes, sir.

Mr. Craven:

Q. And when you saw that building at the time that you made the measurements you may state whether or not it then had the appearance to you as having been erected several years prior thereto?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Yes, sir, it did.

Mr. Craven:

Q. How long have you known that building?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Well, I observed it the same time I did the hotel for the first time.

Mr. Craven:

Q. All those buildings at the time that you made these measurements and so long as you have known them have been openly and continuously occupied so far as you know?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not proper cross examination and calling for a conclusion of the witness.

The Court: Over-ruled.

A. I am not qualified to testify to that; it wasn't any concern of mine; I don't know whether they were or not.

Mr. Craven:

Q. It is a concern of ours. Were they occupied by the owners or anybody else on the date that you examined them and measured them?

Mr. Toner: The same objection, and on the further ground counsel's question is impertinent; his question has been answered.

The Court: Over-ruled.

A. They were occupied at that time, Yes, Sir.

Mr. Craven:

Q. Each and all of those structures and so-called encroachments stand and have stood in plain view of any person or party who might pass along the main line of your right of way or be in or about the depot at the station of Springbrook?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. Yes, Sir, anyone who looked could see them.

Mr. Craven:

Q. During the ten and a half years that you have been in the service as you have stated has the company maintained a depot agent at Springbrook?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not proper cross examination, not within the issues.

90 The Court: Over-ruled.

A. Any time during that period that I have had occasion to be interested in what is going on at Springbrook there has been an agent there; whether there has been one there continuously or not I am not qualified to say.

Mr. Craven:

Q. About how frequently did you you yourself pass to and fro over the plaintiff road during the several years during your ten and a half years of employment as you stated?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. I don't do anything else except travel over my territory.

Mr. Craven:

Q. My question is approximately how frequently would you pass through that particular place——

Mr. Toner: The same objection.

The Court: Over-ruled.

Mr. Craven:

Q. —Or be about there?

A. Sometimes I am not out here to pass through there for months then again I am through there three or four times a week; I 91 couldn't say; I couldn't even give an approximation.

Mr. Craven:

Q. Have you ever stai-d in Springbrook over night?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

Mr. Craven:

Q. That is, during the time of your service?

A. I have, Yes, Sir.

Q. At this hotel that is claimed to be an encroachment?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. I have, Yes, Sir.

Mr. Craven:

Q. How frequently did that happen during the last ten years?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. A very few times.

Mr. Craven:

Q. How long ago was the first time that you so staid at the hotel?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. I can't remember.

92 Mr. Craven:

Q. Approximately how long?

A. It might have been in 1913 or 14. I am not positive.

Q. What structures, if any, has the plaintiff company ever erected outside of its main two hundred foot right-of-way and within the one hundred foot now claimed of the forty acre tract, that part of which is unplatted and lying next to and east of the Village of Springbrook?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not proper cross examination, not within the issues. I am not objecting because the defendant may or may not have answered that owns the land, that you are referring to, or claims to own the land you are referring to.

The Court: Over-ruled.

A. The only thing I know of is a right of way fence.

Mr. Craven:

Q. When was that right of way fence that you speak of constructed?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. I can't remember.

Mr. Craven:

93 Q. That right of way fence is indicated upon this plat Exhibit A by a line with the dots or stars on it?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. It is, Yes, Sir.

Mr. Craven:

Q. And that fence would continue westerly to the figures 75 plus 97 E. F. as indicated on the map?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. That is our method of designating "end of fence," Yes, Sir.

Mr. Craven:

Q. Now, you spoke of Front Street in your direct examination as not traveled or pretense of travel.

Mr. Toner: Objected to as assuming facts not in evidence.

Mr. Craven:

Q. Do you mean to say that you know of your own knowledge that Front Street has never been used as a street?

A. I can't say that, No, Sir.

Q. Front Street, when you seen it, was open, was it?

94 Mr. Toner: Objected to as incompetent, irrelevant and immaterial, assuming facts not in evidence, to wit: that there is a Front Street and that the witness said there was.

The Court: Over-ruled.

A. As a matter of fact I didn't know there was a street there.

Mr. Craven:

Q. You stated in your direct examination that Front Street was right south of your main right of way and paralleled your right of way?

Mr. Toner: Objected to as a mis-statement of the witness' evidence.

Q. And then Mr. Toner asked you if it was traveled and you answered that it was not. Now, did you at that time see Front Street, and can you tell us whether it was in fact open?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, an unfair question, a mis-statement of the witness' entire testimony.

The Court: Over-ruled.

A. I just testified that I didn't know at that time that there was a Front Street there.

Mr. Craven:

95 Q. Did you examine the ground where Front Street lies?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, calling for the improvements.

The Court: Over-ruled.

A. I observed the ground, Yes, Sir.

Mr. Craven:

Q. Was it an open ground or was there obstructions upon that ground to prevent travel at that time?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. I am not trying to be at all technical, but the thing that is confusing me is at the time I was first there—is that what you refer to, the time I made the survey?

Mr. Craven:

Q. The time you did this measuring up, the time—

A. (Interrupting.) I had access after that to the register of deeds office here, so I learned that there was a street supposed to be called Front Street, and it is hard for me to distinguish the two in your question.

Q. The only thing I want to find out is at the time you were there and after you learned that there was such a thing as a claimed Front Street, whether or not that ground that constituted that street was open ground so that one could pass over it if they saw fit, to travel it if they saw fit?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. It was open ground, but it would be impossible to travel over it unless they drove around, off around that so-called dwelling-house.

Mr. Craven:

Q. You can testify that that dwelling house encroaches upon the ground that it is—that is designated as Front Street?

A. That would be my opinion.

Q. But you haven't made any measurements to ascertain whether or not that dwelling does, in fact, encroach upon Front Street?

A. Well, I know where the dwelling is located, but the question didn't come up, as to whether it was located in the Street or not; I wasn't making any effort to find that out.

Q. When you testified in your direct examination that the railroad company has been continually making the ordinary uses of its grounds, what use has the railroad company ever made of the portion outside of the two hundred feet lying within the platted 97 portion of Springbrook?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not within the issues of the case.

The Court: Over-ruled.

A. I don't know of any.

Mr. Craven:

Q. And what use has the railroad company ever made of any portion of that same strip outside of the one hundred feet lying to the east of Springbrook and within this forty acres?

Mr. Toner: Same objection.

The Court: Over-ruled.

A. I don't know of any excepting to plat and setting stakes designating industry lots.

Mr. Craven:

Q. And are there any structures or improvements within this one hundred feet that lies outside of your two hundred feet right of way within the portion that has been platted as East Springbrook?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not within the issues.

The Court: Over-ruled.

A. No, I know of none.

98 Mr. Craven:

Q. And are there any such structures upon the same hundred feet lying to the east of the platted portion of Springbrook and in this same forty?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Isn't that a repetition of the same question?

Mr. Craven:

Q. No, I am speaking of commercial sites lying to the east.

A. You said east and I have testified that the platting and setting of stakes on the portion lying east of Springbrook—isn't that the same question?

The question is read.

A. There is none that I know of.

Mr. Toner: Are you talking about this strip east now?

A. That is as I understand Mr. Craven.

Mr. Craven:

Q. The cutting of grass and the taking of soil or earth that you speak of on your direct examination didn't have reference to this particular one hundred foot strip that lies outside of the two hundred foot right of way that crosses the platted portion or that lies to the east of the platted portion?

99 Mr. Toner: The same objection.

The Court: Over-ruled.

A. No, Sir, I didn't intend to designate that.

Mr. Craven:

Q. Mr. Stevenson, could you tell me when the reservoir and apparatus connected with this softening plant was started to be built?

A. Well, I can answer the question in part; I don't know as to the time when the reservoir was built but the so-called softening plant was built, started in 1914 and finished in 1915.

Q. And was the reservoir prior to your time or subsequent?

A. It was there when I first came.

Q. The reservoir was of no use before you took charge?

A. Yes, Sir.

Q. You say the softening plant was built after your time?

A. Yes, Sir.

Q. I suppose there was surveys made with reference to that improvement, by your department?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial unless this witness made them, not proper cross examination.

The Court: Over-ruled.

A. There was no surveys made, No, Sir.

100 Mr. Craven:

Q. Showing you Exhibit One which is marked "Map of East Springbrook," and there is a filing as being filed in the register of deeds office in this county in July ninth, 1903, I will ask you if that is the plat which you referred to as having discovered in 1917, I believe you stated?

Mr. Toner: Objected to as a mis-statement of the witness' evidence, incompetent, irrelevant and immaterial.

Mr. Craven: In what particular?

Mr. Toner: Particularly when he discovered it. The question—go ahead and answer it anyway.

A. That is the map, I saw, Yes, Sir.

Mr. Craven:

Q. Now, in drawing Exhibit A or any other map of East Springbrook which Exhibit A map taken from that you refer to, whoever did the work must necessarily have access to and examine Exhibit One?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion and guess of the witness for the obvious purpose of leaving the impression that the map must have been made after that plat was filed.

101 The Court: Over-ruled.

A. Yes, so-called townsites are platted on new or existing maps from time to time, from records secured in the register of deeds offices.

Redirect examination.

By Mr. Toner:

Q. Mr. Stevenson, since the time that Exhibit A was first prepared and prepared with the view to this particular case, have you had occasion to be on the ground and make further examinations?

A. I have. Yes, Sir.

Q. Several of them?

A. Yes, Sir.

Q. And this map, has it been corrected some up until you made the other map, Exhibit G, if there were any changes took place?

A. Yes, there was.

Q. And after you made this one, however, you let that one drop, after you made G you let A just run along from that time—did not correct it any more, is that correct?

A. I don't know.

Q. I will make it clear. On Exhibit A you have shown certain encroachments which were corrected at the time they were made, were they not?

A. That is true, Yes.

Q. And today, however, certain of them have been removed entirely, have they not?

A. That is true, Yes.

Q. And therefore Exhibit A in that one particular as to certain encroachments having been removed are not correct today 102 as it stands here?

A. No, Sir, it is not.

Q. This map Exhibit G is absolutely correct, right up to date, isn't it?

A. This one is, Yes.

Q. With the exception of the encroachments I have referred to which have been removed this one is correct?

A. With the exception as noted, Yes, Sir.

Q. When you—after you made this examination on the ground, after you first made this you re-checked it, did you not?

A. Yes, Sir, I did.

Q. And that work that is done on this was not all done in one day or at one time, was it?

A. No.

Q. You correct it from time to time, keep it up to date?

A. We are doing that constantly, Yes.

Q. As far as showing a plat like this on here or this reservoir on those regular maps that you have, the fact that it is on this map and the fact that it is not on that map means nothing with reference to the time the map was made, does it?

A. Nothing at all, No, Sir.

Q. When an outside proposition comes up you put it on isn't that right?

A. That is true.

Q. Counsel asked you a number of questions with reference to the reservoir and putting on the softening plant and so on. That work up there while it was being done isn't in any way connected 103 with this strip of station grounds down here in controversy, is it?

A. No, Sir.

Q. —Wasn't then, and isn't now?

A. No, Sir.

Mr. Toner: I will offer in evidence Exhibit G.

Recross-examination.

By Mr. Craven:

Q. I understood you to say in your direct examination that at one time that you communicated the encroachment to the people of Springbrook. Could you tell us to what people you so communicated?

A. Well, I couldn't say as to what people; I think with someone in each one of the places except the lumber yard.

Q. And that was in 1917?

A. Yes, Sir. As to who they were, I don't know.

Mr. Toner: Plaintiff rests.

Defendant's Case.

It is stipulated that on May 13th, 1907 Philander Pollock conveyed by quit claim deed an undivided one-half interest in and to Blocks One, Two, Three, Four, Five, Six, Seven and Eight, East Springbrook, North Dakota and the unplatte portions of the Northwest of the Northeast of Eighteen, 155, 99, Williams County, North Dakota to Nicholas W. Comford on February 27th, 1909; 104 Pollock conveyed by quit claim deed the entire forty acre tract to Comford; that Comford having died on January seventh, 1916, by final decree of the County Court of Mountrail County the unplatte portion of the Northwest of the Northeast of Section Eighteen aforesaid was vested in the widow of the deceased, Elizabeth Comford, and on July 15th, 1916 Elizabeth Comford conveyed to the defendant Vivian H. Steinke the part of the unplatte portion of the Northwest of the Northeast of Section Eighteen which is set out in the complaint and which is involved in this litigation. That on August thirty-first 1906 Pollock and Comford conveyed by warranty deed to defendant Henry Graichen Lot One, Block One East Springbrook, North Dakota, and on April Third, 1906 Pollock and Comford conveyed by warranty deed to Emma C. Shartle Lots Two, Seventeen and Eighteen, Block One, and said Emma C. Shartle by quit claim deed on August 21st, 1914 conveyed Lot Two only to the defendant Henry Graichen. That on March thirtieth 1906 Pollock and Comford conveyed to Wilfred P. Versoi Lot Fourteen, Block One, East Springbrook, North Dakota by warranty deed, and on April twelfth 1916 and August sixteenth 1916 respectively Versoi, his wife joining, conveyed said lot to Everett A. Webster and 105 Walter Webster by warranty deed. That on March thirty-first 1906 Pollock and Comford conveyed by warranty deed to John B. McClure Lot Fifteen, Block One East Springbrook North Dakota and McClure by warranty deed on August 17th 1908 conveyed said lot to defendant Ely Kingston and on March 30th, 1906 Pollock and Comford conveyed by warranty deed to Ely Kingston Lot Sixteen, Block One; that on October twenty-third 1906 Com-

ford and wife conveyed to Berry Marple by warranty deed Lot One, Block Seven, East Springbrook and Berry Marple on February Eleventh, 1907 conveyed said Lot by warranty deed to the defendant Daniel Jacobson. That on February thirteenth 1906 Pollock and Comford conveyed by quit claim deed to R. H. Kingston Lots One and Two Block Seven and Lots One, Two and Three, Block Eight, East Springbrook, and on March twelfth, 1906 said Kingston conveyed to Meyer Lumber Company Lots One and Two Block Eight East Springbrook, North Dakota by warranty deed and Meyer Lumber Company by quit claim deed on July fifteenth 1913 conveyed said Lots One and Two, Block Eight to the defendant Springbrook State Bank. That the conveyances hereinbefore referred to were sufficient in form and substance to convey the property therein 106 described if the grantor or grantors as the case may be, had any title or right to convey or attempt to convey that part of said property included within the boundaries of the station grounds of the plaintiff referred to in this action and claimed by plaintiff.

It is further stipulated that the instruments of conveyance above referred to contained no reservation nor any information which refers to the existence of the station grounds referred to and claimed by plaintiff.

Mr. Craven: On behalf of defendant, Craig we offer in evidence certified abstract of title to Lots Three and Four, Block Seven, marked Exhibit Two.

Mr. Craven: On behalf of the defendant, Springbrook Trading Company we offer in evidence certified abstract of title of Lot Number Three, Block Eight, East Springbrook, North Dakota, marked Exhibit Three.

Mr. Craven: Defendants offer in evidence Exhibit One, being the original plat of East Springbrook, together with the filing thereof as endorsed on the back, together with all certificates thereon.

Mr. Toner: Plaintiff makes no objection to the foundation 107 laid, but objects to the same as incompetent, no probative force, not tending to prove or disprove any issue in this case.

The court: Over-ruled.

HENRY GRAICHEN, called as a witness on behalf of Henry Graichen, one of the defendants, and being duly sworn, testified as follows:

Direct examination.

By Mr. Owens:

Q. I believe, Mr. Graichen, you are the owner of Lots One and Two of Block One, of East Springbrook?

Mr. Toner: Objected to in so far as it relates to a controverting on that particular, as calling for a conclusion of law of the witness.

The Court: Sustained.

Mr. Owens: Well, you are the party that got a deed to these lots I have just mentioned?

A. Yes, sir.

Q. I believe we have agreed here that those deeds were given in 1906 to you?

A. 1906, Yes.

Q. That is correct, is it?

A. Yes.

Q. Did you pay for the lots as they were conveyed to you by that deed?

A. Yes, sir.

Q. How much did you pay, if you remember?

108 A. I don't just remember; I didn't buy them both at once. Lot One was about a hundred and fifty dollars, I think, if I aint mistaken.

Q. And Lot Two?

A. Lot Two I got that some time later. I forget now what that was.

Q. Was that also a hundred and fifty dollars—did you pay the amount that is specified in the deed?

A. Yes, Sir.

Q. And the record shows a hundred and fifty dollars that is right, is it?

A. Yes, Sir.

Q. So that you paid a hundred and fifty dollars a piece for those lots?

A. Yes.

Q. You have buildings on those lots, have you?

A. Yes.

Q. Would you describe to the court what buildings there are?

Mr. Toner: I want to take a general objection to this question of the buildings; I don't want to be repeating it. Counsel asks that he be given an objection to all this general line of testimony, if that is the intention to go into it?

Mr. Owens: Yes.

Mr. Toner: With reference to buildings and the kind of buildings and the value and so on as incompetent, irrelevant and immaterial, not within the issues, not tending to prove or disprove any issue in the case.

109 The Court: Over-ruled.

Mr. Toner: I ask the court if I may have that to all this line of questions without repeating.

The Court: Yes. Let that same objection and the same ruling stand.

Mr. Owens:

Q. Go ahead and describe the buildings that you have on these lots.

A. Well, there is a one-story building forty-eight by sixty.

Q. One building that is forty-eight by sixty—the front end of the lots—which do you refer to as the front end?

A. The end facing the south. There is another building twenty-four by forty-four; that is nearest the right of way.

Q. Is there any other buildings?

A. That is all the buildings there are.

Q. And that last building that you speak of is back of the front building?

A. Yes, there is about thirty feet between the two buildings.

Q. Now, do you know when those buildings were erected? Put up on there?

A. Well, somewhere around 1907, I think, that last building nearest the right of way was put up, and the other one was built in 1906.

Q. Have you paid the taxes on those lots, this property
110 ever since?

A. Yes.

Mr. Toner: Object to that as not the best evidence and move to strike out his answer on the same ground.

The Court: Sustained.

Mr. Owens:

Q. Have you got the tax receipts?—if you have paid any taxes on that property?

A. Yes.

Q. Did you pay taxes on this property that you have described in 1906? The first year you owned it?

A. Well, I don't remember that; I will have to look at the tax receipt to find out.

Q. You have the receipts, have you?

A. I have, Yes.

Q. Do you know what the approximate value of the first building you described is?

A. Oh, it cost me two thousand dollars.

Q. Will you state the approximate value of the second building that you speak of, the one nearest the right of way?

A. Well, that is approximately a hundred and fifty dollars, maybe.

Q. Those buildings have stood constantly on those lots since they were constructed, have they?

A. Yes.

Q. And you have used and occupied them since you bought the premises, in 1906?

A. Yes.

111 Q. What line of business, if any, have you conducted there since 1906?

A. Hardware and implement business.

Q. Is there any obstruction between the buildings which you have on these lots and the depot, the Great Northern depot? I show you this plat, Exhibit A and you may examine it. Calling your attention to the notations on there "depot" and the green square on Lot One and Two of Block—What I am getting at, is there any obstruc-

tions between your buildings and the railroad right of way other than as shown on this plat here?

A. No, there is no other.

Q. Those notations on the plat are approximately correct, are they, as to the lumber shed in the block west of you, Block Eight?

A. Yes.

Q. So that as between your buildings that you have referred to and the railroad right of way, the tracks there, there is no obstruction whatever—no other buildings?

A. No, no other buildings.

Q. How long have you lived there in Springbrook, Mr. Graichen?

A. I have lived there continuously since 1906 July.

Q. Do you know whether there was any buildings put up there where the lumber yard is—Meyer Lumber Company or the Springbrook Trading Company?

112 Mr. Toner: We ask that we have the same objection to all of the testimony of this witness.

The Court: Over-ruled. Let the objection stand.

A. Yes, there is buildings put up there.

Mr. Owens:

Q. I believe those yards are located right directly west of your store?

A. They are.

Q. Do you know when those were put in there?

A. I can't tell the year; I remember when they done them.

Q. Were they before or after you put up your building?

A. Some of them were put up before and some after.

Q. Which ones, if you remember, were put up before?

A. Well, the lumber company had an office there; it is still there. They built a shed since that.

Q. A fence—is there a fence around their property?

A. There is a fence around the yard. Yes.

Q. Do you know when that was put up?

A. No, I think not.

Q. Was that put up before or after the office?

A. It was put up after.

Q. And the sheds were put up after the office building?

A. Yes.

Q. Are there any other buildings there beside the lumber shed and the office?

A. There was a store building on those lots where the lumber yard stands now.

Q. What kind of a building was that?

A. It was a frame building, iron-clad building.

Q. What part of the premises occupied by the lumber yard was that building standing?

A. It was on the east side of the premises.

Q. What was that used for?

A. General store.

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Q. Was that before or after the lumber office was put up?
A. Well, it must have been about the same time.
Q. Who occupied that building?
A. Charles Ulrich, or Kingston did part of the time.
Q. Which Kingston?
A. Ely Kingston; that is the only ones I know.
Q. And is that building still there?
A. No, the building is burned down.
Q. You say that was occupied as a store building?
A. Yes.
Q. What was that, a one or two story building?
A. One story building.
Q. Any one living in it?
A. Well, part of the building was two story.
Q. Part of the building was two story?
A. Yes.
Q. Was there living rooms upstairs?
A. There was.

114 Q. Was there a basement or a cellar under it?
A. There was under the store building, not under the warehouse back.
Q. Then there was, beside the store building, there was a warehouse back of it, was there?
A. Yes, with rooms upstairs.
Q. And about what size was that?
A. About twenty by thirty, I should judge.
Q. This warehouse you speak of stood which way from the Front Street there, with reference to the railroad track?
A. Well, it was nearest the railroad track.
Q. Then you intend to convey the idea that the store building was facing south, was it?
A. South.
Q. And was the front of that building one or two stories?
A. One story.
Q. Then back of this store was what you call the warehouse?
A. Well, it was used for a warehouse.
Q. And upstairs over that was the living rooms?
A. It was.
Q. Then this ware-house or store-room as you call it was the closest to the railroad track, was it?
A. Yes.
Q. How long ago was it that that burned down?
A. Oh, it is six years ago.
115 Q. Now, did you say whether or not there was a basement under this building or any part of it?
A. There was under the store.
Q. Foundation under it?
A. Yes.
Q. What kind of a foundation?
A. Stone.

Q. Do you know the size of that building, the whole thing—store-building and ware-house?

A. No, I don't know what size.

Q. Now, do you know anything about the property described as Lot One in Block Seven, that is up on the corner I will refer to it, commonly known as the Jacobson property?

A. I know where the lot is.

Q. Was there a building on that lot?

A. There was.

Q. What was the building used for, if you know?

A. It was used for a pool-hall.

Q. Anything else?

A. Later used for a store building.

Q. There was a pool hall there, was there, and drug-store there at one time?

A. There was a drug-store there at one time.

Q. In a store-building?

A. Yes.

Q. And the last it was used for was a store-building?

A. Yes.

Q. Do you know when that building was put on that lot?

A. No, I don't.

Q. With reference to the time that you put up your buildings was it up there before or after—put up before or after that?

A. Put up afterward.

Q. And is it still on the lot?

A. No, Sir.

Q. What kind of a building was that?

A. It was a one-story, frame building.

Q. Metal covered?

A. Yes, Sir.

Q. Were there living rooms in connection with it?

A. No.

Q. Do you know, Mr. Graichen, when the building was removed off of there?

A. Last year.

Q. That is, you mean——?

A. 1919.

Q. About what time of the year?

A. Oh, about July.

Q. You stated, Mr. Graichen, that it was built some time after your——

A. (Interrupting.) It was either built the same year I built or the next; I don't remember which.

Q. It might have been built the same year that yours was?

A. Yes.

Q. Now you know where the hotel building stands?

A. I do.

Q. Do you know when that was built?

A. No, I don't.

Q. Was that before or after your building?

A. That was before.

117 Q. Before you put up your building?

A. Yes, Sir.

Q. When I refer to this hotel building I refer to the building located on Lots Three and Four of Block Seven of East Springbrook—you know where I refer to?

A. Yes, there is only the one hotel there, and it is three lots from the corner.

Q. That building still there, is it?

A. Yes, Sir.

Q. Has it been used and occupied ever since you came to Springbrook in 1906?

A. Yes, it has.

Q. About what size is that building?

A. I don't know the width of it.

Q. Is it a one or two story building, the hotel?

A. Two story.

Q. Do you know, Mr. Graichen, whether or not there are any buildings such as dwelling houses or ware-houses back of your property on the north half of that block anywhere?

A. There is a dwelling northeast of me there.

Q. Calling your attention to the plat, Exhibit A, which shows a dwelling house on the Lot Sixteen of Block One, is that dwelling house still there?

A. Yes.

Q. That is the one you refer to as northeast of your store?

A. Yes.

Q. Whose place is that?

A. Ely Kingston owns that.

118 Q. Do you know, Mr. Graichen, about when that building was put up?

A. Well, it was there when I come.

Q. It was there when you came in 1906?

A. It was.

Q. And has it been used and occupied as a dwelling ever since?

A. Nearly all the time.

Q. And is it now occupied as a dwelling?

A. It is not occupied now.

Q. How long since?

A. Oh, several months.

Q. So that you have known it ever since you came there in 1906?

A. Yes.

Q. And does it stand in the same place now?

A. It stands in the same place where it was.

Q. That is the only building back there now, is it?

A. Yes.

Q. Is that property where that house is located fenced in any way?

A. No, it is not fenced.

Q. Is there any obstructions between that house and the railroad?

A. No.

Q. It is in plain view, is it?

A. Yes.

Mr. Toner: It is stipulated that the defendant Graichen paid taxes on Lots One and Two since and including 1906—all taxes as levied on that property described.

119 Mr. Owens: I believe it is also admitted that Christine Graichen is the wife of this defendant and has no other interest in the property?

Mr. Toner: Yes.

Cross-examination.

By Mr. Toner:

Q. Do you remember notice being served on you May 1st 1917 with reference to that part of these lots that we claim?

A. I remember there was a notice.

Q. Would you recognize that notice if you saw it now? (Hands witness paper.) All I want to know was if there was such a notice left with you about that time?

A. There was.

Q. And have and do the people of Springbrook since that time, the people that live there in town, people you come in contact— daily, generally know that the Great Northern Railroad claim two hundred feet on the south side of the tract instead of one since the date of the service of this notice?

Mr. Owens: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witnesss, not a proper manner of proof.

The Court: Over-ruled.

120 A. They talk about it sometimes—the Great Northern Railway claims two hundred feet on the south side of the track.

Mr. Toner:

Q. Now, in talking about the hotel, Henry, you said it has been continuously occupied up to the present time. The hotel is closed, isn't it?

A. It is.

Q. Has been for a long time?

A. Since last October, I think.

Q. It isn't occupied at all now, is it?

A. Not now.

Redirect examination.

By Mr. Owens:

Q. With reference to this property you bought, Mr. Graichen, did you have any knowledge of any claim of the Great Northern Railroad Company or anyone else?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, a self-serving declaration.

A. No, I had no knowledge.

Mr. Owens:

Q. Prior to the date that you say this notice was served on you?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. No.

Mr. Owens:

Q. And there was no talk or general knowledge that counsel asks you about of the people living in Springbrook that the Great 121 Northern claimed any of that property until they came along here, as he says, in 1917?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. No.

Mr. Owens:

Q. And since you have been there, 1906, has the Great Northern maintained and kept an agent there at that station?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. Yes.

Mr. Owens:

Q. And maintained switching yards there?

A. Yes.

Q. Did they, and all that time keep what is known as a night and day man there?

A. Yes.

Q. From the depot how do they get up town? What we call "up town" to this Main Street—which way do they go?

A. They walk across the railway tracks then they go up the main street.

Q. Then there is a main street?

A. Going East and West, Yes.
Q. In front of your buildings?

A. Yes.

122 Q. How long has that street been used as the main street?
Referring to Exhibit One, do you refer to main street, this one indicated on the plat Exhibit One as Main Street?

A. Yes.

Q. Was that a main street when you came there in 1906?

Mr. Toner: As to this line of testimony, there being no legal dedication being shown, we object to the testimony as incompetent, irrelevant and immaterial, furthermore, it is not the best evidence.

Mr. Owens:

Q. I will ask you: Was that used, that street indicated on Exhibit One, was that used as the main street?

A. Yes, it has been used continuously since 1906.

Q. And the people used, in the use of that main street, is that the one you referred to when you said they crossed the railroad track then came down to the main street?

A. Yes.

Q. Now, about where would they come from the depot on to that street?

A. Well, they would be on that street as soon as they crossed the track.

Mr. Toner: Move to strike out the answer as a conclusion of the witness and not the best evidence.

The Court: Over-ruled.

Mr. Owens:

123 Q. During the time you have known about the station agent there, the depot agent, where does he maintain his office?

A. In the depot.

Q. I notice on Exhibit One, Mr. Graichen, a street marked along the railroad right of way here as Front Street. Was that street open and used?

Mr. Toner: Objected to as calling for a conclusion of the witness. If counsel would ask him whether or not there was traffic or driving on there, we have no objection.

A. Well, it isn't used; it may be open.

Mr. Owens:

Q. Was it ever used?

A. Just for driving.

Mr. Toner: The same objection.

The Court: Over-ruled.

A. There has been driving across there along the right of way.

Mr. Owens:

Q. Then it has been used along there for driving?

A. Used for a road some time.

Q. How long has it been used for a road?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial.

The Court: Over-ruled.

124 A. Oh, that is—I don't know; since 1908, somewhere along there, since they haven't used it.

Mr. Owens:

Q. You mean since 1908 since they haven't used it?

A. Yes.

Q. Before that time they did use it, is that it?

A. They did.

Recross-examination.

By Mr. Toner:

Q. What do you mean by switching yards—what kind of a haf-luting term were you getting off your system then? You mean they got a side-track down there?

A. They have a side-track.

Q. You don't mean to tell us there is a man stays in that depot down there at night, do you, nor to convey that impression to this court?

A. Don't they have a night operator there?

Q. Do you mean there is a man that stays there all night?

A. They do.

Q. Is that the impression you want to convey here?

A. Yes.

Q. And all the switching that is done there is like any other siding, there is stuff in there and they switch cars in there and bill them out when the train is there?

125 A. Yes, that is it.

Q. There is no switchmen stationed around there? Around that town?

A. No, not that I know of.

Q. It is just a small place, isn't it?

A. It isn't very big.

Q. About how big—tell us and we will know. Could you give us an estimate of the population?

A. No, I don't know how many population they have there.

Q. Are there fifty—twenty-five?

A. Oh, Yes, there must be all of a hundred there.

Q. And there are more now than there have been, isn't that correct?

A. Yes.

Q. You didn't buy those lots; you took two with the buildings on them?

A. No.

Q. And you didn't start erecting any buildings until after you had obtained deeds?

A. No, Sir.

Q. And those dates that the deeds show, August 30th and 31st, that is the time you got them. Whatever dates the deeds show is correct, aren't they?

A. That is the time I got the deed, I expect.

Q. And any buildings that you erected were erected that fall and after that time, isn't that right?

A. They might have been erected before I got the deed.

Q. That is what I am asking you; you think you started 126 up to put up a building before you got the lots?

A. Yes.

Q. Do you know you did?

A. Yes, I did.

Redirect examination.

By Mr. Owens:

Q. With reference to this town of Springbrook, that is incorporated village, is it not?

Mr. Toner: Objected to as not the best evidence, calling for a conclusion of the witness.

The Court: Sustained.

Nine o'clock A. M. the following proceedings were had:

DANIEL JACOBSON, called as a witness in his own behalf and being duly sworn, testified as follows:

Direct examination.

By Mr. Owens:

Q. Your name is Daniel Jacobson?

A. Yes, Sir.

Q. One of the defendants in this action?

A. Yes, Sir.

Q. According to the records in this action you have a deed and title to Lot One, of Block Seven of what is known as East Springbrook?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion of law of the witness, to wit: the word title.

The Court: Over-ruled.

A. I have.

127 Mr. Owens:

Q. And you got that in 1906, I understand?

A. 1907, I think the deed was issued in February, 1907.

Q. Yes, it was conveyed to you in February, 1907, that is right. Now, are there any buildings on that property at this time?

Mr. Toner: As to the evidence relating to buildings, their value, and the use of any of the parts of the controverted strip for streets or otherwise, the plaintiff objects as incompetent, irrelevant and immaterial, not tending to prove or disprove any material issue that can or would affect the result of this lawsuit.

The Court: Over-ruled.

A. There is not.

Mr. Owens:

Q. Were there buildings on this lot?

A. Yes.

Q. Do you know when the building on this lot was put on there?

A. Started in 1906, completed in 1907.

Q. On what part of the lot was this building located?

A. On the front or the north end of the lot, on the street.

Q. Facing the street?

A. Facing the street.

Mr. Toner: Move to strike out the answer as a conclusion 128 of the witness, incompetent, irrelevant and immaterial, not responsive to the question.

The Court: Over-ruled.

Mr. Toner: Move to strike out on the further ground not the best evidence; I am referring to that part of the answer as to the street.

The Court: Over-ruled.

Mr. Owens:

Q. What do you mean, Mr. Jacobson, when you say this building was facing the street?

Mr. Toner: The same objection, calling for a conclusion of the witness, not the best evidence.

The Court: Over-ruled.

A. I mean the road on the north end of the lot, the road commonly called a street, as we always called it, supposed it was a street, main street.

Mr. Owens:

Q. That is, you mean by that the building faced the main thoroughfare?

A. Yes, Sir.

Q. And was that place that you call the street traveled by the public in general?

A. Yes.

Mr. Toner: May I have this general objection?—We will ask that we have the general objection to all testimony of this witness on the ground it is incompetent, irrelevant and immaterial, not 129 within the issues not tending to prove or disprove any of the material issues in the case.

The Court: All-right; Overruled.

Mr. Owens:

Q. Was that a main thoroughfare?

A. Yes.

Q. Running through what town?

A. Springbrook.

Q. In what general direction did that street or thoroughfare run?

A. East and West.

Q. I will show you defendant's Exhibit One and ask you if Main Street that you have referred to is located on that Exhibit?

A. Right through here (indicating).

Q. When you say "through here" you mean the part of the plat indicated as Main Street, do you?

A. Yes.

Q. And the front part of your building was facing to the north on that street?

A. Yes.

Q. How long, to your knowledge, has that Main Street been traveled by the general public in front of that building of yours?

A. To my knowledge since some time in May, 1906.

Q. That is when you came there, was it?

A. That is when I came there.

Q. Then the building was put on that lot you say in 1906?

A. Yes.

Q. Who put the building on?

A. Berry Marple.

130 Q. What kind of a building was that?

A. Frame building.

Q. I show you Exhibit A and ask you if the building you refer to is indicated on this exhibit?

A. Yes.

Q. That is, the place, the building you refer to is indicated on this exhibit as the green portion of Lot One in Block Seven, is it?

A. Yes.

Q. The figures there indicating the whole, the size and length and width of the building, are those figures approximately correct?

A. Yes.

Q. What was that, a one or two story building?

A. One story.

Q. Was that building occupied after it was constructed?

A. Yes.

Q. And for what purposes?

A. For several years a pool-room and then a drug-store and general store afterward.

Q. Did you live in Springbrook at any time?

A. Yes.

Q. How long did you live there?

A. Eight or nine years.

Q. And you knew Berry Marple?

A. Yes.

Q. Who was he? —What I mean did he have anything to do with this property?

A. He built this building.

Q. Did you buy the property from him?

A. Yes.

Q. And did you pay him for it?

A. Yes.

Q. What was the consideration that you paid him for this property?

Mr. Toner: Objected to as not the best evidence.

The Court: Over-ruled.

A. Nine hundred dollars.

Mr. Owens:

Q. This is the same man that you got the deed from that you referred to as buying the property?

A. Yes.

Q. Do you know where the depot is now located in Springbrook, do you?

A. Yes.

Q. With reference to this building on this lot where was the depot located?

A. Northwest.

Q. About how far?

A. Possibly one hundred feet each way from the closest corner of the lot.

Q. Were there any other buildings or any obstructions whatever between this building of yours and the depot?

A. No.

Q. Do you know whether or not the Great Northern Railroad Company maintained an agent there at Springbrook?

A. Yes.

Q. Where was his office?

A. In the depot.

Q. How long has the company maintained an agent there at Springbrook?

A. He was there when I came there.

Q. Up until the present time?

A. Yes.

Q. And this building was setting right across you say from the depot about one hundred or a hundred and twenty five feet?

A. Yes.

Q. Store front in the building?

A. Yes.

Q. And facing the depot?

A. Yes.

Q. Now, did this main street that you speak of connect with any other street on the west?

A. West of the building?

Q. Yes.

A. No, it run a little bit west of the building and across the track, across the track north.

Q. Was there any other streets connecting with it running north and south?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness and not the best evidence.

The Court: Over-ruled.

A. Yes.

Mr. Owens:

Q. At what point from your building?

A. Right on the northwest corner, the road coming from the south.

Q. Then your building was right on the corner of this block?

A. Yes.

Q. And there was a road coming from the south connecting with this Main Street and running east?

A. Yes.

Q. And was that a public traveled road?

A. Yes.

Q. How long had that road been traveled that you know of?

A. It was there at the time I came.

Q. And is it still traveled?

A. Yes.

Q. What is it designated at now, if you know?

A. The State Road.

Mr. Toner: Move to strike out the latter part of the answer as a conclusion of the witness, mere hearsay, not the best evidence.

The Court: Over-ruled.

Mr. Owens:

Q. Did you pay the taxes on this property since 1907 and since you bought it?

Mr. Toner: Objected to as not the best evidence.

The Court: Over-ruled.

A. Yes.

Mr. Owens:

Q. Now, since you purchased this property in 1907 up to the present time each year who has been in possession of that property?

A. I have.

Q. And you rent it at any time?

A. Yes.

Q. And collected the rents on it?

A. Yes.

Q. Now, do you know where the building known as the hotel property is located?

A. Yes.

Q. I believe that is located on Lots Three and Four of 134 this Block Seven.

Q. How far is that from your building?

A. Twenty-five feet.

Q. Just one lot?

A. Twenty-five or thirty; there is a lot in there.

Q. How long has that building been there to your own personal knowledge? The hotel I mean?

A. Since 1906 that I know of.

Q. That is a two-story building, is it?

A. Yes.

Q. And was it occupied as a public hotel?

A. Yes.

Q. That faces the depot also, does it?

A. Faces the north, Yes.

Q. And on this same Main Street?

A. Yes.

Q. Can you tell us anything about when the property that is now occupied by the Springbrook Trading Company's lumber yard and office, when were those buildings put up there, if you know anything about that?

A. 1906 some of the buildings.

Q. Do you know anything about when that fence was put around there?

A. No, I don't remember.

Q. Do you know anything about the Ely Kingston dwelling house there on Lot Sixteen, in Block One—Do you know where it is?

A. Yes.

Q. Do you know how long that building has been there?

A. It was there in 1906.

Q. Was it there before you came?

A. Yes.

Q. Do you know anything about the fences along the railroad that the railroad constructed east and west of the platted portion of Springbrook, whether or not there are any fences?

A. Yes, there are.

Q. What kind of fences are they?

A. Barbed wire, Cedar posts, five or six wires, I should judge.

Q. Does that fencing come up to the platted portion of the town-site?

A. Yes.

Q. Do you know when those fences were put in there?

A. No, I don't.

Q. When did you move the building off of your lot there?

A. It was taken off in 1918.

Q. Were those fences put in before or after that?

A. To the best of my knowledge they were in before that.

Q. About how long?

A. I would say about two years, I think they went in in 1916; I am not positive.

Recross-examination.

By Mr. Toner:

Q. Mr. Jacobson, were you up in this country before 1906?

A. No.

Q. About when in 1906 did you first come up here?

A. In May.

Q. Were you down around Springbrook near that time, May, 1906?

A. Yes.

136 Q. Well, the first time you ever saw that place down there, the railroad that is now there was then being operated, was it not?

A. The road, Yes.

Q. It evidently had been there for some time then?

A. Yes.

Q. And they had their layout down there practically the same as they have now—there are some additions, of course?

A. Yes.

Q. Were you told in May—May 1st, to be accurate, 1917 that you had a building which encroached on the property of the railway company?

A. Yes.

Mr. STEVENSON, recalled, testified as follows:

Recross-examination.

By Mr. Craven:

Q. When, if you know, was the railroad first built?

A. I don't know exactly what time it went through Springbrook.

Q. Do you know when the government survey of that land was made, that is through that country there, of White Earth?

A. No, I have no knowledge of that.

137 Mr. F. M. CRAIG called as a witness on behalf of defendants, and being duly sworn, testified as follows:

Direct examination.

By Mr. Craven:

Q. Mr. Craig, where do you live?

A. Four miles north of Springbrook.

Q. And your business is what?

A. Farming.

Q. How long have you lived in and about Springbrook there?

A. Sixteen years.

Q. Continuously?

A. Yes, sir.

Q. There has been some evidence here with reference to a certain hotel building on Lots Three and Four, Block Seven, of East Springbrook. Are you the man that purchased those lots?

A. Yes, sir.

Q. Exhibit Two, which is in evidence here, shows at entry Number Thirteen a deed from Philander Pollock and Nicholas W. Conford to F. M. Craig and B. S. Marple bearing date April Third 1906. Are you the F. M. Craig referred to in that deed?

A. Yes, Sir.

Q. So then you purchased the property April third, 1906?

A. Yes, we had the deed for it, Yes, Sir.

Q. Prior to the time you had that deed did you have any contract for deed for that same property, prior to that time?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not the best evidence.

138 The Court: Over-ruled.

A. Yes, Sir.

Mr. Craven:

Q. When did you go into possession of that property under your contract to purchase the same?

Mr. Toner: I might as well make the general objection now to all the testimony of this witness from now on, is objected to as incompetent, irrelevant and immaterial, not within the issues, not tending to prove or disprove any material issue which will have any effect on the result of this law-suit.

The Court: Over-ruled. Let the same objection and ruling stand.

A. 1904.

Mr. Craven:

Q. I see an entry here on Exhibit Two being entry number forty a warranty deed from Berry S. Marple and Emma A. Marple, his wife to Frank M. Craig covering this same property. I presume

that that Berry S. Marple is the B. S. Marple referred to in the deed to the property from Pollock to yourself and B. S. Marple?

A. Yes, Sir.

Q. How, who built the hotel building and any other structures that may be on that lot or these lots?

A. Myself and this B. S. Marple.

139 Q. When did you begin the construction of that building?

A. 1904.

Q. And completed the building when?

A. Spring of 1905.

Q. And that building set generally on what kind of a foundation and basement, if any, under it?

A. Well, it had a small basement, and that is on a stone foundation.

Q. And it is a two-story frame building, is it?

A. Yes, Sir.

Q. And the size of it, I suppose, is substantially correct as indicated upon this may I looked over with you yesterday?

A. I think so, Yes, Sir.

Q. Now, from the time of the construction of that building down to the present time you yourself have been the owner of it and in possession of it?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial. This is in addition to the general objection—calling for a conclusion of law of the witness.

Mr. Craven: Strike it out.

Q. You may state in what way and by whom this hotel building has been occupied and used, if occupied and used each year 140 from 1905, the time it was completed down to date?

A. Well, part of the time I have occupied it myself, and other times I had it rented to different parties.

Q. And it was being used by you and the different parties for what purposes?

A. For a hotel.

Q. During what portion of this time did you yourself run the hotel? In that building?

A. Well, I have run it in 1905 and six, and then I don't know the times—

Q. (Interrupting.) Just generally, about how much of the time did you run it yourself, approximately, how many years?

A. Oh, I should judge seven or eight years.

Q. And this hotel building was so used down to what time?

A. To last October.

Q. Since that time it hasn't been used?

A. No, Sir.

Q. Now, what other out-buildings, structures and improvements in connection with that hotel building have you on that lot, or those lots, if any?

A. I have just a little small shed for a stable and closet and coal-shed.

Q. How about wells, if any?

A. Yes, Sir, I have a good well there.

Q. Now, with reference to the line of property as claimed
141 by the railroad company at this time in this action against
you, where is your well located—on the property that the
railroad claims now, or otherwise?

A. No, I think it is on the property that they don't claim.

Q. You imagine that it may be outside of the southerly line which
they now are claiming?

A. Yes, I know it is at the back part of the hotel.

Q. You may state whether or not these lots from, we will say
1907 or six on, during each year, has been assessed for taxes?

A. Yes, Sir, they have been assessed.

Mr. Toner: Move to strike out the answer as not the best evidence, a mere conclusion of the witness.

Mr. Craven:

Q. You may state whether or not you have paid all taxes levied
and assessed, if any, against this property or any part thereof since
1906 or seven?

A. Yes, Sir.

Q. I suppose you made that payment of taxes to Williams
County?

A. Yes, Sir.

Q. You may state whether or not those taxes was exacted and paid
during each and every year of that period?

A. Yes.

Q. You may state whether or not taxes were in fact levied and
assessed against this property during each of those years that you say
paid them?

A. Yes, Sir.

142 Q. The evidence in this case shows that there was a building
erected on Lot One of Block Seven, I believe it is the
Jacobson property. Do you know how long that building stood
there?

A. Well, I don't know just the year that it was moved away, but
it was built I think in 1906.

Q. Built shortly after your building?

A. Yes, Sir.

Q. And that building continued there in the same place down
to how long ago about?

A. Two years, I think, or two and a half, something like that.

Q. The depot building of the railroad company as shown on
Exhibit A is at the point marked "depot"?

A. Yes.

Q. Now, how long has that depot building been at that point?

A. Ever since I have known Springbrook that has been eighteen
years since I first seen it.

Q. And during all of that period the road has been operated con-

tinuously through Springbrook and the depot maintained there at that point?

A. Yes, Sir.

Q. During all of that time has there been what they call station agents stationed there?

A. Well, the two first years after I knew the place I wasn't there the whole year around.

Q. I mean, as you know it?

A. As I knew it, they have been, Yes, Sir.

Q. Now, we will take the lots in Block Eight, that is 143 the lumber yard office and sheds. When was the first improvements in the way of filling or grading or building of structures on the ground where this lumber shed now stands and the office?

A. 1907, I think was the first.

Q. And that improvement on that lots in 1907 consisted of what generally?

A. Of a lumber office and lumber shed.

Q. That was constructed there by whom, if you know?

A. I think the Rogers Lumber Company.

Q. Now, prior to that time was there any dwelling house that later was taken away or got away or destroyed or whatever it was in Block —?

A. Well, I think there was a building on that that was moved.

Mr. Toner: Move to strike out the answer as a mere guess of the witness, not a statement of fact.

The Court: Stricken out.

Mr. Craven:

Q. Where was what is generally known and what is referred to in this evidence as the Ely Kingston store building that burned—where was that located?

A. It was located north and east, well, you might say due east of the depot on that same lot that the lumber office was on.

144 Q. It was on lot—I am showing you defendants' Exhibit

One, and calling your attention to Block Eight and Lots One, Two and Three thereof, and ask you on which of those lots was the Ely Kingston store—building that was burned?

A. It lays at the lot next to this street by Henry Graichen's building that we were speaking of, but I can't locate it; I haven't got my glasses with me.

Q. When you say that it was out next the street by Henry Graichen's, you have reference to First Street, have you? As shown in Exhibit One?

A. First Street and the street running north and south; it was on the corner lot; I don't remember what number.

Q. You mean the corner, you mean Lot Three which is next to First Street?

A. Yes, Sir.

Q. And on what portion of that lot was that store-building?

A. Why, it was on the south portion of it.

Q. You say that those lumber offices and sheds, as you remember it, was built somewhere about what time?

A. 1907.

Q. The office built on a permanent foundation?

A. I think so.

Mr. Toner: Move to strike out the answer as a mere conclusion of the witness, not a statement of fact.

145 Mr. Craven: I will concede it.

The Court: Stricken out.

Mr. Craven: Will you admit that all of these buildings were of permanent structures and upon permanent foundations?

Mr. Toner: No, I don't say anything of the kind. You can state in the record that the plaintiff is admitting nothing.

Mr. Craven: You may state also that the defendant is going to prove his case the best he knows how.

Q. Now, Mr. Craig, that office is how high?

A. The lumber office?

Q. Yes, that is, is it one or two story?

A. Well, it is what I would call a story and a half; it is twelve foot high; they have an upstairs room.

Q. And I suppose the lumber shed is an ordinary lumber shed such as is used in this country and country yards?

A. Yes.

Mr. Craven: With permission of counsel and court I would like to interpose another witness who is in business here in the city and his store is locked up pending his giving his testimony.

Mr. Toner: No objection on the part of counsel.

146 L. C. STEWART called as a witness for defendants, and being duly sworn, testified as follows:

Direct examination.

By Mr. Craven:

Q. How long have you lived in this country?

A. Since 1893.

Q. When was the Great Northern Railroad built through what is now known as Springbrook and that section of country there?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not within the issues and not the best evidence, and this witness is clearly incompetent to testify; as a matter of fact the Great Northern Railroad wasn't built through here at all.

Mr. Craven:

Q. Well, the road that the plaintiff is now operating—when was that road built that is now called the Great Northern road?

Mr. Toner: Same objection.
The Court: Over-ruled.

A. It was built before that.

Mr. Craven:

Q. And you came in 1893?

A. Yes, Sir.

Q. You don't know how long before that it was built?

A. Yes, I have got an idea, but I don't know positively.

Q. When you came here was the government survey of of
147 that country there around and about Springbrook generally
completed?

Mr. Toner: The same objection, calling for a conclusion of the
witness, and obviously beyond his knowledge.

The Court: Sustained.

Mr. Craven: I offer to prove by this witness that he homesteaded
in that section of the country about five miles southwest of Spring-
brook; that he filed upon said land about the time that he stated that
he came to this country and that at that time the government sur-
vey of that section in and about Springbrook was all made. I am
going to indicate to the court what I am trying to get at: The rail-
road company has got a certain time to take from the United States
Government such a grant as this, and that it is gauged by the con-
struction of the road, and gauged also in certain cases by the time
when the government survey is made. It would be our contention
in the end, unless they accept that grant within the time fixed by
Congress therefor, that they could not accept any grant, and that
the department could not waive it. That is the purpose of this
testimony.

Mr. Toner: To the question we object simply on the ground it
is immaterial; to counsel's argument we respectfully call his
148 attention to the fact that the United States Government have
already made the grant and it is not in his province to ques-
tion it.

Mr. Craven: I will answer that and I will say that is a matter for
the court to determine.

The Court: I will sustain the objection, because I don't believe it
is the best evidence. I think that evidence is a matter of record.

Mr. Craven: But, Your Honor, it is only a collateral issue. I
don't want to insist upon this, but it is a great hardship to have to
get all of those original records of all those collateral facts and put
them into evidence here. I have had occasion to go into that ques-
tion in several law-suits where I proved title to the land orally when
it happened to be a collateral issue in a case such as a divorce case
bearing upon a question of alimony. You can prove that title of
that man not by the best evidence, but by any evidence.

Mr. Toner: Object to the whole offer as incompetent, irrelevant
and immaterial, calling for a mere conclusion, hearsay evidence of
the witness and not within the issues.

Mr. Craven: If there is no objection of the court's taking into consideration as to the history of the government survey 149 as to when it was made in that particular section, as to when the road was first built—

Mr. Toner (interrupting): The court would undoubtedly get accurate information of it if he wanted to take judicial notice of it.

Mr. Craven:

Q. When you knew the St. Paul, Minneapolis and Manitoba Railroad which is now the Great Northern Railroad when you came to that country first, where was the station grounds of Springbrook?

Mr. Toner: Objected to as calling for a conclusion of the witness and not the best evidence.

Mr. Craven: In what way, Mr. Toner, is it not the best evidence?

Mr. Toner: I don't care to explain my objection fully; I think it is obvious.

Mr. Craven: I mean the depot.

Mr. Owens: We will call the court's attention to the exhibit here Exhibit B.

The Court: Do you mean with reference to where it is now?

Mr. Craven: Yes, I want him to give the location of the first station grounds that they used, as he knew it.

Mr. Toner: Objected to on the further ground it is not the 150 best evidence, self serving declaration of the witness.

Mr. Craven: In other words, I want to draw out from the witness as to where Springbrook was first used by the railroad company, and propose to show that it was at an entirely different place than where it is at the present time.

Mr. Toner: For the court's information I will call the court's attention to the fact that the plat he is looking at is not the station ground plat; it is a right of way plat.

Mr. Owens: This testimony is in connection with that exhibit that the court has, and that is Exhibit C.

Mr. Craven: I wish to call the court's attention also to Exhibit C which claims to be a selection in lieu of another selection and I am showing what that lieu selection was, where it was; therefore, the evidence shows there was two selections.

Mr. Toner: And they are both described; this evidence is merely not the best evidence—hearsay.

The Court: Over-rule the objection.

Mr. Toner: I don't object to the question in its present form, when he adds "I mean the depot."

The question is read.

151 A. Well, it was about a mile or maybe two miles east of where it is now, but there wasn't no depot, what they call just a section house.

Mr. Craven:

Q. Showing you Exhibit B and calling your attention particularly to the word "Springbrook" as indicated on Exhibit B in the Southwest quarter of Section Four I will ask you if the station grounds as you first knew them and as you have testified was located at that point?

Mr. Toner: I want to ask this witness a couple of questions for the purpose of showing he don't know anything about that plat.

Mr. Craven: I object to counsel's having the right to butt in for the purpose of showing any witness that the defense put on here don't know anything about what, they are testifying to.

Mr. Toner: I want to show that he doesn't know anything about that plat except as counsel leads him.

Mr. Toner: I object to the question as incompetent, irrelevant and immaterial, calling for a conclusion of the witness, mere hearsay; the matter is obviously not within his knowledge, no foundation laid for this witness to testify to the plat at all.

152 Mr. Craven:

Q. By that I mean the depot and place that they used for taking on and off passengers and freight and so forth.

The Court: I will over-rule the objection as to that.

Mr. Craven: I am not trying to get anything in but a plain question.

A. Well, of course, I don't know anything about the plat.

Q. You know where selection four is?

A. No, I don't know as I do.

Q. And all you know is that it was some distance east of Springbrook, in your judgment something about a mile and a half?

A. Yes, somewhere; I couldn't say as to the distance, but I know it is east of where it is now.

Q. And you know that they so used that point as and for the purposes of taking on and discharging passengers and freight and so forth, to your knowledge?

Mr. Toner: Objected to as immaterial, not within the issues.

The Court: Over-ruled.

A. I couldn't say about that.

Mr. Craven:

153 Q. You couldn't give us any information how long they used it down there before they moved it up to what is now East Springbrook?

Mr. Toner: Objected to as leading; the question has been answered.

The Court: Over-ruled.

A. No.

154 Mr. CRAIG, recalled, testified as follows:

Further direct examination.

By Mr. Craven:

Q. That lumber shed and lumber buildings and yard as is shown here, is now enclosed with fence, at least, to some extent? When was that fencing of the lumber yard first done, to your knowledge?

Mr. Toner: I suppose our general objection, despite the interruption, stands to this testimony?

The Court: Yes.

A. I can't state what year, but to the best of my knowledge it has been ten years.

Mr. Toner: Move to strike out the latter part of the answer as a mere conclusion of the witness and not a statement of fact.

The Court: Stricken out.

Mr. Craven: We object to the striking out on the ground it is competent evidence.

Q. What buildings or improvements of any kind are now on Lot Three of Block Eight?

A. That is not the lots we have been speaking of.

Q. It is the same block we have been speaking of, only the two where the lumber shed and office are now, I am coming back to the next one where the burned store building was.

A. There is no buildings on those except part of the lumber shed that belong to this same—

155 Q. (Interrupting.) Does that lumber yard contain what you might call a cement house, that is, a warehouse for such as cement?

A. Yes.

Q. And that warehouse is located where?

A. Yes, Sir, that is a part of the office building.

Q. Now, calling your attention to Lot One Block One, which property according to the evidence here gives it as the Graichen hardware store property, when was that shed or warehouse in the rear of that lot constructed?

A. I think it was in 1907.

Q. And since 1907 has it stood and been maintained at the same place that it now stands?

A. Yes, Sir.

Q. And since it was constructed has it been continuously used?

A. Yes, Sir, it has been continuously used.

Q. That shed was one or two story?

A. One.

Q. Calling your attention to what is referred to in the evidence here as the Kingston dwelling house on Lot Sixteen, Block One, when, if you know, was that dwelling house erected and constructed?

A. I think it was in 1906 that was built.

Q. And has that dwelling house been continuously maintained at the same place that it is now during all that time?

A. Yes, Sir.

Q. Are there any other out-buildings on that same lot?

156 In connection with the Kingston dwelling such as wells or out-houses of any kind?

A. I think there is a little out-house, a little shed and a well.

Q. Showing you Exhibit One, which is defendant's exhibit, I will ask you if the streets and alleys indicated upon Exhibit One have been opened and used by the public for public travel since the time that you so purchased your property?

A. Yes, Sir.

Q. When you purchased your lots and built your hotel did you have any notice or information of any kind that the railroad company was claiming any part or portion of the grounds so covered by your building?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, mere self-serving declaration and not of any materiality on the question.

The Court: Over-ruled.

A. No, Sir, I did not.

Mr. Craven:

Q. When did you first ascertain, and from whom, and how that the railroad company was making claim to the extra one hundred feet that lies next to the, and immediately south of the two hundred feet of right of way?

Mr. Toner: The same objection.

The Court: Over-ruled.

157 A. Three years ago this spring.

Mr. Craven:

Q. I suppose that was about the same time that has been testified to here yesterday that a certain notice was served?

A. Yes, Sir, all served at the same time.

Q. One of those notices came to you?

A. Yes, Sir.

Q. That was the first information or knowledge you had of the railroad's claim?

A. Yes, Sir.

Q. What consideration did you pay for the lots, if any?

A. I think the two lots cost me fifty dollars at that time.

Q. Refreshing your recollection by the consideration as stated in the deeds to you and Marple from Pollock, the consideration therein stated is forty dollars. Is that the true consideration, or do you wish now to say that you paid fifty dollars for each lot?

A. No, I was under the impression that it was fifty dollars for the two lots.

Q. Well, then, later on, you purchased the interest of Marple, and what consideration did you pay Marple for that interest—refreshing your recollection, the deed as shown by the Exhibit Tw₉, which is the abstract, shows \$475.

A. Well, I guess that is correct.

Q. You haven't any independent recollection of it, I suppose at this time?

A. No.

Q. Now, Mr. Craig, generally, what did the construction 158 of the hotel building proper, cost you?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not within the issues, not tending to prove or disprove any issue that bears upon the result.

The Court: Over-ruled.

A. Well, at that time, it cost me a little better than One thousand dollars. Lumber was cheap then.

Mr. Craven:

Q. You did considerable of the work yourself, I suppose?

A. Yes, Sir.

Q. Under that hotel is there a stone basement?

A. No, Sir.

Q. Just a basement, and not stoned up?

A. Yes, Sir.

Q. When you purchased the property I suppose you procured an abstract of title thereto?

A. Yes, Sir.

Q. When you so purchased the property there was no improvements upon the property at that time?

A. No, Sir.

Q. At that time was there anything along the Great Northern Railway Company's property such as fences or anything on the south of the main track?

A. No, Sir.

Mr. Toner: Objected to as immaterial and move to strike out on the same ground.

The Court: Over-ruled.

Mr. Craven:

Q. There is some evidence here that there is a certain 159 fence to the east of the platted portion of Springbrook and located on or about the Southern boundary line of the one hundred foot additional strip that the company now claims. When was that fence erected, if you know?

Mr. Toner: Objected to as repetition.

The Court: Over-ruled.

A. I couldn't state what year, I should judge five or six years.

Mr. Craven:

Q. Five or six years ago?

A. I should judge so Yes.

Q. Was that fence that I speak of so erected there before the company gave you the notice in 1917?

A. Yes, Sir.

Q. About how many years before that time was that fence erected?

A. Well, I think it was either two or three years before.

Q. And is there a fence to the west of the platted portion of the townsite along the same line?

A. Yes, Sir.

Q. And that fence was also erected about the same time as the fence to the east was?

A. Yes, Sir.

Q. And, as I understand you, prior to that time there was no fence of any kind marking any line to the south of the railroad company as it passes through that forty across the land?

A. No, Sir.

Q. Now, you may state whether or not all these structures 160 in question that the company is now claiming as encroachments had already been built and completed prior to the time of the erection of those fences that we have spoken of?

A. Yes, Sir.

Q. And for about how many years the last of the structures was erected before the fences?

A. I would judge eight or ten years—eight anyway.

Cross-examination.

By Mr. Toner:

Q. Did you have any lawyer examine your abstract when you were negotiating for those lots down there?

A. Not at that time when I got the first deeds, not when I first got the first deeds.

Q. You passed on the question yourself as to whether you were getting good title or not, did you?

A. Well, the papers were drawed up by a notary public.

Q. I understand, but as far as having a lawyer pass on whether you were getting good title you didn't do that at all when you were negotiating for them?

A. No, Sir, I didn't.

Q. Now, you have given a lot of general testimony as to different buildings and little sheds and out-houses that belong with them as being located here on this territory which was referred to as lots and blocks. You know that the controversy is about a strip one hundred feet wide, don't you?

A. Yes, Sir.

Q. And you don't know, and you can't testify whether 161 all these wells and little out-houses and sheds you are referring to are on this strip or not?

A. No, I wouldn't testify that they was all on it.

Q. And you can testify as to whether the entire building or any one of the buildings you referred to is on this street or not—the entire building?

A. Well, I believe that I could testify to one.

Mr. Craven: You Honor, we are not questioning the accuracy of their plat and we haven't gone into that because we didn't dispute that feature.

Mr. Toner:

Q. The different wells and little houses, and out-houses you referred to are located on the same lot as the main building you referred to at that time, and that is all you know about whether they are on this strip or not?

A. I couldn't say that they are all on the strip; I never measured it.

Q. You never made any measurements?

A. I never made any measurements.

Q. As far as those fences built on the west to the east you say they were there for two or three years before May, 1917 when those notices were served?

A. To the best of my knowledge, Yes, Sir.

Q. You knew when those fences were built that the company was claiming that one hundred foot strip, didn't you?

A. No, Sir, I hadn't heard nothing of it, didn't have no notice of it.

162 Q. Couldn't you see that those fences were more than one hundred feet from the track?

Mr. Craven: Objected to as argumentative and an unfair question.
The Court: Over-ruled.

Mr. Toner:

Q. Can't you see today?

A. Oh, Yes, I could see that the fences—

Q. (Interrupting.) You could see that they included a two hundred foot strip rather than a one hundred foot strip?

A. I could see.

Q. Didn't that put you on notice?

Mr. Craven: Objected to as argumentative.

The Court: Over-ruled.

A. Well, I noticed that they was putting their fences out there.

Mr. Toner:

Q. Do you want us to understand that that meant nothing to your mind at all?

Mr. Craven: Objected to on the same ground.

The Court: Over-ruled.

A. I didn't know what they was going to do with part of the town; they was fencing what didn't belong to the town.

Mr. Toner:

Q. They were fencing right up to it, wasn't they?

163 A. Yes.

Q. They don't build fences in town, do they?

Mr. Craven: Objected to as irrelevant and immaterial.

The Court: Over-ruled.

Mr. Toner:

Q. You are familiar with the roads generally through this country, not only the Great Northern, but others?

A. Yes, Sir.

Q. You don't see them building fences in town, do you?

A. No, Sir.

Q. You didn't expect they would build a fence in town whether they claimed that property strip there or not?

A. Well, I didn't know what they might do.

Q. You know, as a fact, they don't do it, don't you, from experience?

A. I never seen it, No, Sir.

JACOB WIDMAN, called as a witness for defendants and being duly sworn, testified as follows:

Direct examination.

By Mr. Craven:

Q. Mr. Widman, where do you live, and what is your business?

A. I live at Springbrook; I am cashier of a bank there and manager of a lumber yard.

Q. You are connected with, as I understand it, the defendant bank and trading company?

A. Yes, Sir.

Q. You are a stockholder in each of the corporations, I 164 suppose?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. Yes, Sir.

Mr. Craven:

Q. When did you first come to Springbrook?

A. I think in April, 1904.

Q. By Springbrook I mean East Springbrook?

A. That is what I understand you to mean.

Q. Where is the place located that is generally known and called Springbrook in that locality?

A. Well, the place that has been known as Springbrook, about ~~to~~ miles from there, east further.

Mr. Toner: Move to strike out the answer as incompetent, irrelevant and immaterial, not within the issues, mere self-serving declaration.

The Court: Over-ruled.

Mr. Craven:

Q. Could you tell us in what section that point is that you say is known as Springbrook?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Section Four, Township 155, Range 99.

Mr. Craven:

Q. Calling your attention to Exhibit B and the words "Springbrook" as indicated thereon in the Southwest quarter of Section Four, I will ask you if that is the place that you have reference to that is known and generally called Springbrook?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not the best evidence, plat speaking for itself; on the further ground there is no foundation laid for this witness to testify as to the plat or the locations on it either one,—beyond his knowledge.

The Court: Over-ruled.

A. Well, I have been there a number of times, and I can't locate just on what particular point on that map that old Springbrook was, but—

Mr. Toner (interrupting): Move to strike out the answer as not responsive.

Mr. Craven:

Q. Just finish the answer—"but what"?

A. To the best of my knowledge it is in that forty right there (indicating).

Mr. Toner: Move to strike out the answer as incompetent, irrelevant and immaterial, not responsive and not a statement of fact, but a mere guess and opinion of the witness.

The Court: Stricken out.

Mr. Craven:

Q. You say you have been on the ground that is known as Springbrook?

A. Yes.

Mr. Toner: Objected to as incompetent and immaterial.

The Court: Over-ruled.

Mr. Craven:

Q. You may state where that Springbrook is with reference to the Great Northern Railroad as it passes through the country there, if it passes anywhere near it?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Well, it is about two miles further east in section Four.

Mr. Craven:

Q. That is, two miles further east than what?

Mr. Toner: The same objection.

The Court: Over-ruled.

Q. Than East Springbrook.

Mr. Craven:

Q. But is it on or off of the railroad as the railroad is constructed there?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Yes.

(The question is read.)

167 Mr. Craven:

Q. That is, is Springbrook on the railroad or off the railroad as the railroad is constructed there?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Well, it is right along the right of way.

Mr. Craven:

Q. Now, when was it that you first was on that ground Springbrook that you speak of?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Sometime in the spring, during the summer of 1901.

Mr. Craven:

Q. And what was there upon the ground to mark the ground as you seen at that time? That is, I am speaking of what was on the right of way to mark the ground—to mark it as Springbrook?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Well, there was an old cellar-hole there where the building had been standing and some posts—I shouldn't say posts—they was blocks drove into the ground a ways and set there for a building to set on.

Mr. Craven:

Q. And was that upon the right of way proper of the road?

168 — Mr. Toner: Same objection, and further objection it is calling for a conclusion of the witness and not the best evidence.

The Court: Sustained.

Mr. Craven: I offer to prove by this witness that this particular improvement that he speaks of was located upon the right of way of the road at that point; and expect to prove further by this witness and other witnesses that this structure that this witness has now testified to was part and parcel of the equipment used and maintained there by the Great Northern Railroad Company or its predecessor for station purposes, and that the same had been used for more than one year, and that that improvement was placed upon the grant to the road by the United States Government, and that the land referred to as Springbrook is the same land referred to by Sammie Hill in his certificate Exhibit C wherein he states that the tract above described is selected in lieu of a tract containing twenty acres in the Northwest of the Southwest of Section Four, and in the East Half of the Southeast quarter of Section Five, Township 155 North of Range 99 West.

Mr. Toner: As to this particular offer as it relates to other witnesses, it is objected to as inapplicable and premature, in so far as it relates to this witness as incompetent, irrelevant and in 169 — material, and particularly on the ground that this witness is not qualified to testify; that the evidence that is sought to be elicited is not the best evidence; that it is mere hearsay.

The Court: I will sustain the objection.

Mr. Craven:

Q. Your bank, I understand it, or the defendant bank is the owner of Lot One and Two in Block Eight?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, in so far as it relates to the disputed one hundred feet strip calling for a conclusion of law of the witness.

Mr. Craven: I understood you to admit yesterday that this bank was the owner of those two lots. Am I right?

Mr. Toner: No, you are not; I admitted they got deed to them. I didn't admit that anyone was the owner of any part or any of the lots than the one hundred foot strip.

The Court: You admitted they got deed sufficient in form to grant title.

Mr. Craven: And your stipulation that there was nothing on this bank's chain, of title, that is, there was no reservations or exceptions.

Mr. Toner: Yes, that is right.

170 Mr. Craven: That applies to this bank's title as well as the others?

Mr. Toner: Yes.

Mr. Craven:

Q. What I mean by that is that they received a conveyance of that under a deed that has been referred to by counsel yesterday in the stipulation?

A. It has.

Q. Could you tell us what the consideration was that the bank paid for that property at that time?

Mr. Toner: The general objection—all testimony of this witness along the line of the ownership of the property, the value, the location of the buildings and length of time used and the occupation of them and the use of streets or claimed streets, roads and so forth, is objected to as incompetent, irrelevant and immaterial, not within the issues and not tending to prove or disprove any material issue that will affect the result of this law-suit.

The Court: Over-ruled.

Mr. Toner: I ask that that objection go to all the testimony of this witness without being repeated.

The Court: Yes, let it stand to all of it.

A. Yes, I can.

Mr. Craven:

Q. Tell it.

A. Two hundred dollars.

171 Q. At that time was the property improved in any way?

A. No.

Q. What, if any improvements did the defendant bank make upon that property since?

A. We put up a building, a frame building, cost us about Thirty five hundred dollars.

Q. When was that frame building so erected by the bank?

A. The summer of 1913.

Q. Now, showing you Exhibit A I will call your attention to certain markings thereon in green, of structures, and I will ask you which one is the building you are now referring to, if any?

A. It isn't there.

Q. It isn't shown?

A. It isn't shown. The Springbrook State Bank isn't shown on that map.

Q. Does the Springbrook State Bank itself stand upon the lots that the bank so purchased—does the bank building that you are talking about that cost thirty-five hundred dollars stand on Lots One and Two, Block Eight that the bank so purchased?

A. Let me see the map, if you please. When I testified as to the value of Lots One and Two of Block Eight I thought that I was testifying as to the value of Lots One and Two, Block Six.

Q. If that is true, those are not in question at all.

Mr. Craven: And I will ask to strike out all his testimony that comes after he gave the valuation of the lots, I mean the 172 consideration of the lots.

The Court: All right, stricken out.

Mr. Craven:

Q. Mr. Widman, where—

Mr. Toner (interrupting): That leaves the objection standing I suppose?

The Court: Yes.

Mr. Craven: It may be considered as standing.

Q. I am talking about the bank's lots one and two in Block Eight which is now a part of the lumber yard property but still owned by the bank, and I ask you what consideration the bank paid for said lots One and Two, Block Eight.

A. We purchased that from the Meyer Lumber Company; I am not certain what we did pay for those but it seems to me we paid four or five hundred dollars.

Q. Refreshing your memory, I notice here on a certain abstract that counsel has loaned me at entry No. 23 is a quit claim deed from the Meyers Lumber Company to the Springbrook State Bank, and it recites a consideration of Six hundred dollars. Is that the correct consideration as you remember it?

A. That is.

Q. That deed is dated July 15th, 1913. I suppose that approximately is the correct time when your bank became the purchaser of these lots?

A. Yes.

Q. Now, was there any improvements or structures upon 173 these lots at the time that you so purchased, or your bank so purchased it?

A. Yes.

Q. And these structures or improvements consisted of what?

A. They consisted of a ware-house for storing such stock as window-sash and doors.

Q. Well, it is a ware-house. Go on.

A. And lumber-shed for storing lumber; and the lots were fenced with a board fence, a picket board fence about eight feet high.

Q. Now, Mr. Widman, how long, to your knowledge, have these structures—ware-house and lumber-shed been standing upon the property?

A. Well, part of them have been standing there ever since I first came there.

Q. And that would be what year?

A. Since 1904.

Q. What part of it had been there in 1904?

A. The ware-house was there in 1904.

Q. And was the property then being used by the Meyers Lumber Company?

A. No.

Q. It was used by whom?

A. It was used by a firm named Kingston & Kingston.

Q. For lumber yard purposes, was it?

A. For lumberyard purposes and store purposes.

Q. But the store was located on Lot Three, Block Eight, wasn't it?

A. They had a store-building on Lot Three of Block Eight, but they used this ware-house and the lumber yard to store a portion of their goods, because the store building was only a small shack.

Q. Now, what, if any, improvements did the Kingstons make upon that property while they were so in possession and so using it?

A. Well, they made some improvements in the way of building racks to pile lumber on, but they weren't very permanent. They were later pulled up by the Rogers Lumber Company.

Q. Was that the only improvement of any kind that the Kingstons made was just building the racks; was there any filling or grading or anything like that?

A. Not that the Kingstons did.

Q. Then when the Rogers Lumber Company became the purchasers of the property they made further improvements did they?

A. Yes.

Q. Approximately when did the Rogers Lumber Company become the purchasers of the property?

A. I couldn't testify right as to the dates on that.

Q. Well, I don't care exactly for dates, months or years - to the best of your recollection.

A. It was about in 1907.

Q. And what improvements did the Rogers Lumber Company put upon the property?

A. They put - to start with, they did considerable excavating; they hauled in considerable dirt on to those lots.

175 Q. That is, instead of excavating, they hauled in dirt?

A. They hauled dirt in from the back part of the lot. -- May I use the map? There was a sort of a low - there was a pond in that corner of that lot right there (indicating), and they hauled considerable dirt in there and filled it up.

Q. What you mean by "that corner there" you mean where the green mark and office building is located upon Exhibit A?

A. Well, the ground was so low there, and there was so much water standing there.

Q. I don't care why they did it, but the filling was made where the office building as marked on Exhibit A now stands?

A. Exactly right there, and back of that.

Q. And what other improvements did the Rogers Lumber Company ever make upon the property?

A. Pardon me, but that was Meyers at that time, and then the Rogers people owned it later.

Q. Well, you purchased it from the Meyers?

A. We purchased it from the Rogers.

Q. Your grantor, the Meyer Lumber Company was a corporation that was organized by the Rogers people, I presume?

A. I think they were.

Q. And when you speak of the Rogers Lumber Company being connected with this transaction you mean the company that finally merged into the Meyer Lumber Company?

176 A. I would mean that it was the Meyer Lumber Company that merged into the Rogers Lumber Company.

Q. What other improvements did your grantor make, if any, upon this property?

A. Well, after they did the excavating they built a fence and they increased the size of the sheds.

Q. That is, when you say "they built a fence" you mean to say that they built an additional fence than the fences already on there?

A. The fence that was on there wasn't as good as they wanted.

Q. Well, they built an additional fence?

A. They built more fence, built it up in better shape.

Q. And was this office building built by them or by you folks—the Lumber office building?

A. Part of that building was the original building that I spoke of that was built there at the time when the firm of Kingston & Kingston started together.

Q. Yes, but my question is did the Meyer Lumber Company finish that office building or did the bank put it up, finish it?

A. The Rogers Lumber Company finished it.

Q. And about what time was that building finished?

A. It must have been about 1909.

Q. What other structures did your grantor place upon 177 this property, that is, the bank's grantor?

A. I think that was about all the building that they did on it; we did some.

Q. During the time that your grantor occupied this property for what use did it put it?

A. For a lumber yard exclusively.

Q. Now, as I understand it, the Springbrook Trading Company purchased Lot Three, Block Eight? Exhibit three, which is in evidence, at entry No. 17 thereof shows that the Springbrook Trading Company is the grantee named in a certain warranty deed covering Lot Three, Block Eight, bearing dated April 29th, 1915 and the consideration therein recited is \$130. I presume that the deed correctly, as abstracted, correctly shows the date of the deed and the consideration that the Trading Company paid for the property? Is that so?

A. Yes.

Q. As I understand it, Mr. Widman, substantially the same incorporators own stock in the lumber company and also in the state bank?

A. Yes.

Q. Now, after the defendant company's bank and Trading Company became the owner of the property what improvements did they or either of them place upon the property, that is, Lots One, Two and Three?

178 A. Well, we put up another warehouse about sixty by twenty-two feet, two story high.

Q. And when was that warehouse constructed?

A. That was constructed the year before we purchased Lot Three of Block Eight. When speaking of a two-story warehouse I refer to what is generally considered as a two-story building in a lumber yard ware-house.

Q. Is that two story warehouse that you refer to shown on Exhibit A?

A. Right there it is (indicating) that building right in there.

Q. And by your indication and "right in there" you mean that part of the green portion of Exhibit A being the westerly half of the green portion marked on Exhibit A, lumber shed?

A. Yes, Sir.

Q. What year did you build that building, or the Trading Company or the bank whichever one did?

A. That building was built by the Springbrook Trading Company in the summer and fall of 1914.

Q. As I understand it, Mr. Widman, the building that the Trading Company so built as you testified, stands upon Lot One, and perhaps Lot Two of Block Eight, being the property owned by the bank?

A. Yes.

Q. Now, would you tell us how or under what condition that the lumber company erected the structure upon the property so owned by the bank?

Mr. Toner: In addition to the general objection, we object to that as immaterial.

179 The Court: Over-ruled.

Mr. Craven:

Q. What I mean by that is that the lumber company, according to the evidence, and as we understand it, received a deed for only Lot Three of Block Eight, and the bank received a deed covering Lots One, and Two of Block Eight. Now, you stated in your examination that the lumber company erected a certain building which is located on Lots One and Two, property owned by the bank, and I asked you under what circumstances and condition, if any, that the lumber company expended money in erecting such building upon the property owned by the bank.

A. Well, they erected those buildings under the conditions that they owned all of the lots—the Trading Company owned all of the lots.

Q. As I understand it, then, there is some other contract or agreement or understanding whereby the Trading Company received a

conveyance or a contract of conveyance from the bank covering Lots One and Two, Block Eight?

A. There is an understanding between the stockholders that those lots belongs to the Trading Company; in other words, they are carried on the books of the Trading Company.

Q. What amount of money did the Trading Company expend in the erection of that building that you spoke about? Approximately how much?

A. About seven hundred dollars for labor and material, at that time.

Q. Now, as I understand it, at one time there was a store building of some kind located on this Block Eight which later on burned down. On which of these lots was that store building located, and was any part of it upon the portion of ground that the railroad company now claims as additional station grounds?

A. That store was located on Lot Three of Block Eight.

Q. And was any part of the store building upon the ground that is now being claimed by the railroad company?

A. The most of it was.

Q. When was that store building built, so far as you know?

A. Part of it was built before ever I came to Springbrook.

Q. Was that a two story building, or one?

A. Two story.

Q. And approximately what was the dimensions of it?

A. Twenty-four by, I would judge, about twenty-four by sixty.

Q. Was that a frame building?

A. Yes, Sir.

Q. Was there a basement and foundation under the same?

A. There was a stone basement under it.

Q. And did this basement constitute also the foundation? 181 A. Yes.

Q. Did that basement occupy the entire space under the building or only part of it?

A. Only part.

Q. About how large a basement was that?

A. About twenty four by forty.

Q. And did that basement extend over on the ground that is now being claimed by the railroad company or not?

A. A part of it did, I think.

Q. When, as you remember it, did that building burn?

A. That building burned in January, 1914, to the best of my recollection.

Q. You may be mistaken, I suppose, one way or the other a year or so?

A. I might be mistaken a year on any of that stuff.

Q. Well, from the time you first knew that store-building down to the time it burned, whenever it was, what use, if any, was that building put to?

A. Well, they had a general store in it, United States Post Office.

Q. As I understand it, then, it was used generally for store and

business purposes during all of the time that you knew it until its destruction by fire?

A. Yes, Sir.

Q. Was there any other out-buildings or improvements such as wells, in connection with that store-building?

A. There was a warehouse back of that store-building.

Q. Did that also burn?

A. No.

Q. That is still on the property, is it?

A. That was moved after the fire.

182 Q. When was it moved, that is, how long ago, approximately?

A. Well, that building was moved away—the store burned down in the winter along in January, I think it was, and then this building was pulled down and moved away the next spring in May or June.

One-Thirty p. m. the following proceedings were had:

Q. You are cashier of the defendant bank, are you?

A. Yes, Sir.

Q. And what office do you hold in the defendant Trading Company?

A. Secretary-Treasurer.

Q. You have held those offices in each of those corporations for a great many years, have you?

A. Since they were organized.

Q. And you had personal charge of the purchasing by each of them respectively of the property which they purchased which has been mentioned here in the evidence in Block Eight?

A. I did.

Q. And you know of your own knowledge that the transfers were purchased by the bank and also by the Trading Company for a valuable consideration?

A. Yes, Sir.

Q. At that time you may state whether or not the bank or the Trading Company or any of the officers or employees thereof had any notice or knowledge that the railway company claimed any part or portion of the ground covered by Lots One, Two, Three, Block Eight?

183 Mr. Toner: In addition to the general objection, without waiving it now or hereafter, the plaintiff objects specifically to that part of the question which calls for an answer as to the knowledge of other parties as hearsay; to the rest of the question as incompetent, irrelevant and immaterial, self serving declaration, not within the issues.

Mr. Craven: Just strike out the question.

Q. At the time that you took conveyances for and on behalf of the bank and Trading Company of these lots One, Two and Three, Block Eight, Springbrook, respectively, or at any time prior thereto

did you have any notice or knowledge that the railway company was claiming any portion of the grounds covered by these said lots?

Mr. Toner: Objected to as incompetent, as a matter of law, and calling for a self-serving declaration of the witness.

The Court: Over-ruled.

A. No.

Mr. Craven:

Q. There is some evidence here that in May, I believe, 1917, certain notices was served or information given to certain of the property owners that encroached upon this particular strip. Was any such notice given to you, pertaining thereto?

184 Mr. Toner: Objected to as incompetent and immaterial unless he wants to put the question that the knowledge was brought to him.

The Court: Over-ruled.

Mr. Craven:

Q. Or to the bank or to the Trading Company, that you know of?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. I think there was.

Mr. Craven:

Q. To which party, the bank or Trading Company, if you know?

Mr. Toner: The same objection.

The Court: Over-ruled.

Mr. Toner: Objected to on the further ground it is leading.

The Court: Over-ruled.

A. I don't exactly remember, but I think that the agent at Springbrook at that time—

Mr. Craven (interrupting):

Q. Just answer the question as to which one, if you know, and if you don't know, al-right.

The question is read.

Mr. Toner: Objected to as leading.

The Court: Over-ruled.

185 A. I don't know.

Mr. Craven:

Q. To refresh your recollection, I show you Exhibit Four and I will ask you to examine the same and state whether or not that is the notice, so-called, referred to?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, and leading.

Mr. Craven:

Q. That was served on you?

The Court: Over-ruled.

A. Yes, that was served on me.

Mr. Craven: For the purpose of showing which defendant, the bank or the Trading Company received said notice, we offer this in evidence.

Mr. Toner: We object to it as incompetent, irrelevant and immaterial; service of a notice on this man who is admittedly an officer of both of these corporations is notice to both.

The Court: Over-ruled.

Mr. Craven:

Q. Mr. Widman, Exhibit Four bears date May 1st, 1917. Was that the approximate date it was served?

A. To the best of my knowledge it was.

Q. When you first came to East Springbrook what, if any, of those buildings, that is, outside of the ones you have already 186 testified to, was then already erected? I refer to the buildings marked green on Exhibit A. We have gone over those in block- Eight and Seven, I believe. Calling your attention to the Kingston dwelling house on Lot Sixteen, Block One, was that building there at the time that you first came to Springbrook?

A. No.

Q. Do you remember when that building was built?

A. Yes, Sir.

Q. About what time?

A. Well, I can't answer as to the date when it was built, but I was there several years. I think I was there about two years before it was built.

Q. As I remember your testimony you came there in 1904, was it?

A. I came there in 1904.

Q. And has that dwelling house remained in the same place ever since and been occupied?

A. Yes, Sir, it was occupied most of the time.

Q. That is, what is it, a one or two story or story and a half?

A. One story, three room house.

Q. Do you know whether there is any wells or out-buildings on that same lot connected with that dwelling house and used in connection with it?

Mr. Toner: Objected to as repetition, fully gone over.

The Court: Over-ruled.

187 A. There is a drilled well there I think about sixty—fifty or sixty feet deep, that it has been permanent ever since the house was built.

Mr. Craven:

Q. Is that well situated upon the property that is now claimed by plaintiff railway company?

Mr. Toner: Objected to as calling for a conclusion of the witness, no foundation laid for his testifying.

The Court: Over-ruled.

A. Yes, I think it is.

Mr. Toner: Move to strike out his answer as a guess and not a statement of fact.

The Court: Stricken out.

Mr. Craven: Object to striking it out, on the ground it is competent evidence.

Q. I show you Exhibit One, being the original plat of East Springbrook and I will ask you if the several streets and alleys marked thereon are and have been open for travel?

Mr. Toner: In addition to the general objection we object to it as incompetent, irrelevant and immaterial, not the best evidence, calling for a conclusion of this witness and also an attempt to impeach the prior evidence of defendants' own witness that one of those streets hasn't been open or not used for ten or twelve 188 or fifteen years.

The Court: Over-ruled.

A. Yes.

Mr. Craven:

Q. For how long have you known those streets to be so open for travel?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Ever since I located at Springbrook.

Mr. Craven:

Q. You may state whether or not, if you know, that public funds of either the county or municipality of East Springbrook or any other public municipality has expensed of the public funds in the up-keep and maintenance of any of those streets, or any of them?

Mr. Toner: In addition to the general objection we object to it as incompetent, irrelevant and immaterial, calling for a mere conclusion and hearsay evidence of this witness and not the best evidence, no foundation laid as to this witness to so testify.

The Court: Sustained.

Mr. Craven: I offer to show by this witness that year after year, beginning with the year 1904 that public funds both of township in which Springbrook is located and of Williams County and of the municipality of East Springbrook and of the State of North 189 Dakota, *and* has been expended in the up-keep and improvement of said streets, particularly Main Street.

Mr. Toner: We make the same objection to the offer that we made to the previous question, and we submit further that the offer is not made in good faith because counsel can't prove what is claimed by this witness, except through hearsay, if at all.

The Court: I will sustain the objection.

Mr. Craven: I will tell the court that, while counsel questions my good faith, he is mistaken.

Q. I will ask you, Mr. Widman, whether or not you know of your own knowledge whether or not the state and Federal Highway has been laid out and established over and along the entire length of Main Street of East Springbrook?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, on the further ground that if it has been, the court can take judicial notice of the fact that that has been done since the commencement of this action.

Mr. Craven: I will admit that it hasn't been done before that.

The Court: Over-ruled.

A. Yes.

Mr. Toner: We move to strike out the answer as hearsay, not the best evidence. If any such State Highway has been laid 190 out there must be, and is a public record of it, and this witness can't testify from personal knowledge.

Mr. Craven: That is just adding to his former objection an independent other ground.

Mr. Toner: I am aiming this entirely at the answer; move to strike it out.

The Court: Stricken out.

Mr. Craven: Exception.

Q. Mr. Widman, prior to the time that you were handed Exhibit Four as you have testified to on or about May first, 1917, did you, yourself, have any other notice prior thereto that the railway company was making any claim to any of the property embraced within the platted portion of East Springbrook?

Mr. Toner: Objected to as incompetent and immaterial and calling for a self-serving declaration of the witness.

The Court: Over-ruled.

A. Yes, I have a recollection.

Mr. Craven:

Q. What did that consist of?

A. To the best of my knowledge the agent at Springbrook ad-

vised me when I repaired up the fence after the burning of the Ulrich store building that I shouldn't erect any structures on that lot. I was cleaning out the cellar and he told that he didn't want—I think he served notice on me that I shouldn't put up a structure, but I went on and built a fence just the same.

Q. And that was how long ago?

A. Well, his store burned up in the winter.

Q. What year, I mean?

A. It was in 'Fifteen, I think, when the store burned up, and it was the following May or June when we cleaned out that cellar.

Q. And that would be May or June, 1916, to the best of your recollection?

A. No, it would be 'Fifteen, January, 1915 when the fire was, and then the following May, that would still leave it in 1915.

Q. Now, at that time what building, if anything, was done by the bank and Trading Company or any of those other defendants after that time?

A. I don't believe there was any.

Q. It is your judgment that all of these structures that is now complained of had already been erected?

A. Yes.

Q. There is some testimony here with reference to the building of a fence by the railway company to the east of Springbrook over the unplattoned portion of the forty acres in question, and at or about the southerly line of the one hundred foot strip that is now claimed by the plaintiff. Can you tell us when that fence was

192 erected?

A. I remember when they built the fence but I don't remember the date.

Q. I mean approximately how many years ago. Do you know?

A. I really don't know; I would have to guess at it.

Q. The pleadings in this case show that the defendant bank held a certain mortgage on the Steinke property that is the unplattoned portion of that forty acres in question. Is that mortgage still in force?

A. Yes, Sir.

Q. Unpaid?

A. Yes, Sir.

Q. And the bank is still the owner of it, is it?

A. Yes, Sir.

Cross-examination.

By Mr. Toner:

Q. What is the name of this agent at East Springbrook that did the talking to you?

A. What agent?

Q. What is his name, the agent that talked to you about not putting up any more structures?

A. I don't think he talked to me.

Mr. Craven: He asked you what his name is.

Mr. Toner:

Q. This fellow you have been talking about—you know what I mean—when you were cleaning out the cellar.

A. His name was E. T. Retzlaff.

Q. He didn't tell you anyone sent him to talk to you or
193 anything, he simply was officiously telling you where to head
in at?

Mr. Craven: Object to the counsel's conclusion.

The Court: Over-ruled.

A. I don't know whether anybody sent him there to talk to me or not or whether he came on his own accord.

Mr. Toner:

Q. He didn't say anyone sent him, did he?

A. No.

Q. You say this same agent is there yet?

A. He is there yet.

Q. You want us to understand that took place in May, 1915?

A. Well, I don't know as I do; I ain't certain of those dates.

Q. What I was trying to get at—I want to be fair with you—if the lots that those buildings belonging to the bank and Trading Company were erected on were the ones that were erected after you got them were bought in the winter of 1915, I don't see how you were going to get to erect any buildings there before May and get them finished.

A. The time that he made this objection was after the date of that deed in that abstract; that was in Fifteen.

Q. But it isn't customary to build frame buildings in the winter time, though, is it? Up in this country?

A. What I am trying to get at is that date.

Q. Well, change it if you want to; I don't care. You
194 don't want to swear when that date was exactly, is that the
idea?

A. Could I have that abstract again?

Q. Yes.

A. Well, according to this that must have been in 1915.

Q. It must have been in 1915?

A. When the agent there objected to me putting a structure on the lot.

Q. Were you about to put a structure on there then?

A. No.

Q. What was the object of the objection then?

Mr. Craven: Objected to as calling for a conclusion of the witness, merely speculative.

The Court: Over-ruled.

Mr. Toner:

Q. You see what I mean—what would be the object of objecting to putting up a structure?

A. I can't answer that, because I don't know what—

Q. (Interrupting.) Did you tell him you weren't going to put one up?

A. No, I didn't tell him anything; I was cleaning out the cellar.

Q. You didn't talk back at all when he talked to you; you just listened, is that what you want us to understand?

A. We talked the average course.

Q. And you told him at that time, after he told you not to put up a structure, that you didn't have any intention of putting one up?

195 A. I don't remember at this time whether I did or not.

Q. But these lots that the structures you are talking about as having been finished are on, were bought in the winter of 1915, weren't they?

A. No, they were bought in May, the structures that we finished.

Q. Yes.

A. You are now referring to Lots One and Two of Eight, are you?

Q. I am referring to all three of them.

A. Well, I forget now what date the other two were bought; I could look it up.

Q. Lot Three was bought in April, 1915, wasn't it?

A. I think April or May, 1915.

Q. After you people got that one, Lot Three, did you put any buildings on it?

A. No.

Q. Didn't put any on at all?

A. No.

Q. After you got the other two, whatever their descriptions are did you put any on them?

A. Yes.

Q. And after 1915, or do you know when?

A. I don't think we put any more buildings on after 'Fifteen.

Q. When in the spring of 1917 this written notice you have been talking about here was served, was it given to you?

A. Which one are you talking about?

Q. This one about their claiming one hundred foot strip there.

Mr. Craven: Exhibit Four.

A. Yes, I think.

196 Mr. Toner:

Q. I say, it was given to you—you are the fellow?

A. Yes, I think it was.

Q. And from that time on you knew that they claimed a one hundred foot strip extra down there, didn't you, in addition to the right of way?

A. Yes, Sir.

Q. And you knew that for all purposes after that, didn't you?

A. Yes.

Q. You were living there too when they erected those two fences on either side of the town there, were you not?

A. Which fences?

Q. Those cattle fences that run from the platted portion west and east, by the unplatted land there?

A. I don't think the railroad ever have erected any cattle fences.

Q. What do you call them—hog fences or sheep fences? They are barbed wire fences, aren't they?

A. I don't think so.

Q. What are they?—There are fences there.

A. They are made of wire but not barbed wire.

Q. Are they fences?

A. Yes.

Q. There are fences there? Running east of town and west of town?

A. Yes.

Q. You were there when they were put there?

A. Yes.

Q. And the railroad company put them there?

197 A. I don't know whether the railroad put those there or whether Kingston did.

Q. You don't want us to understand that you are testifying that Kingston did?

A. I wouldn't want to testify he did, No.

Q. Well, you needn't, because he didn't. You saw the section crews of the railway company putting that east fence in, didn't you?

A. I don't remember of ever seeing the section crew putting a fence in.

Q. You wouldn't swear you didn't?

A. No, I wouldn't swear I didn't see them.

Q. You did know that after that fence was put in, just from observation, that it was more than one hundred feet south of the center line of the road, there, didn't you?

Mr. Craven: Objected to as irrelevant and immaterial.

The Court: Over-ruled.

Mr. Craven: Further ground it isn't proper cross examination and that this is not the defendant.

The Court: Over-ruled.

A. Well, I don't know whether I ever took notice of it in that way or not.

198 K. L. MATTHEWS, called as a witness for the defendants and being duly sworn, testified as follows:

Direct examination.

By Mr. Craven:

Q. Mr. Matthews, how old a man are you?

A. Seventy, a little over.

Q. Where do you live?

A. Williston.

Q. How long have you lived in this county?

A. Oh, about, over twenty years, I guess, something like that.

Q. Do you remember the year that you came to this county?

A. 'Ninety-five.

Q. At the time that you came to this country, that is, to Williams County and Williston here, you may state whether or not the railroad which is now known as the Great Northern Railroad was then already built and in operation?

Mr. Toner: Objected to as immaterial.

The Court: Over-ruled.

A. Yes, sure.

Mr. Craven:

Q. Do you know, Mr. Matthews, where the place that was called Springbrook was located at the time when you first came here?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial not within the issues, calling for a conclusion of the witness 199 not the best evidence.

The Court: Over-ruled.

A. Yes, Sir.

Mr. Craven:

Q. Where was Springbrook located at that time with reference to East Springbrook that has been mentioned in this action?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Well, that was east of this Springbrook now when I lived there.

Mr. Craven:

Q. About how far east?

Mr. Toner: The same objection.

The Court: Over-ruled.

A. Oh, about two miles, I guess, something like that.

Mr. Craven:

Q. Did you live in the vicinity of what was then known as Springbrook?

A. Oh, about two miles, I guess, something like that.

Q. Do you remember, Mr. Matthews, the section and township that you lived in?

A. No, I don't; I can't tell you that.

Q. Now, what did this Springbrook as you first knew it, consist of, that is, where was it, was it over off of the railroad as the railroad was then located, or was it?

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, *not* foundation laid, calling for a conclusion of the witness, not the best evidence.

The Court: Over-ruled.

A. Well, that was the station at that time.

Mr. Craven:

Q. And by that you mean what, where they took on and discharged passengers and freight?

Mr. Toner: Same objection.

The Court: Over-ruled.

A. Yes.

Mr. Craven:

Q. Could you tell us the approximate time that Springbrook was so used as a station, I mean the Springbrook that you knew when you first came here and about two miles east of East Springbrook?

Mr. Toner: Same objection.

The Court: Over-ruled.

A. That was a station.

Mr. Craven:

Q. And it was used for how many years, if it was years?

Mr. Toner: Same objection.

The Court: Over-ruled.

201 A. Oh, just a few years; I don't know just exactly.

Mr. Craven:

Q. And then later on it was moved down to where it is now at East Springbrook?

Mr. Toner: The same objection, calling for a conclusion of the witness, no foundation laid whatever for any such conclusion.

The Court: Over-ruled.

A. That is what they call Springbrook now; I lived right there that time.

Mr. Craven:

Q. That is, East Springbrook?

A. Yes, Sir.

Q. You lived right there when the station was moved down from old Springbrook to the present location?

A. We always called it New Springbrook, when it was the old Springbrook they moved it down.

Q. That is, the old settlers called it New Springbrook?

A. Yes. I don't know what they called it, but we always called it that.

Q. And what you have reference to as New Springbrook is the Springbrook as it is now known in this country?

A. Yes, Sir.

Q. And as platted East Springbrook?

A. Yes, Sir.

Cross-examination.

By Mr. Toner:

Q. At this place you talk about there was never any depot.
202 A. Well, they called it the depot is all I could tell you. That is the station there; there was a shack there.

Mr. Toner: Move to strike out that part of the answer as a conclusion of the witness and not responsive to any question asked.

Q. I am talking about a building.

A. Well, there was a building there.

Q. What was it?

A. Well, it was a lumber outfit.

Q. Was it a section house?

A. No, the section house was just east of that.

Q. That section house is there yet, isn't it?

A. I don't know; I haven't been there for several years; I guess it is.

Q. It was the building you are talking about, a box-car?

A. It wasn't a box-car; it was just a station there for passengers to get off and on there.

Q. Do you want us to understand that you are testifying that this particular building has been moved up to what has been known as East Springbrook?

A. I don't know whether they moved that building or not.

Q. You don't know whether they just dropped that station whether they moved it any place or not, do you?

A. Well, they moved it there to this other place.

Q. That is just your conclusion. You don't know at 203 thing about what they did. You have no personal knowledge of what the people that are directing that did, do you?

A. I know what I am telling you.

Q. You don't know they moved it there. Who told you that? You don't know that of your own personal knowledge—you don't know where they moved or whether they moved it at all; they might have dropped it—isn't that correct?

A. I lived there a long time.

Q. I understand that, and that don't answer the question at all. You may have lived there for forty years.

Mr. Craven: Object to counsel butting in and stating any proposition until after the witness has fully answered; he has already done that several times, cut him off before he had fully finished.

Mr. Toner: Is that an objection or argument?

Mr. Craven: I am calling the court's attention to it, and I am going to object from this on.

Mr. Toner:

Q. My question is, Mr. Matthews, that you, of your own personal knowledge, don't know whether the officials of the railroad moved the station as you call it, or whether they dropped it; isn't that correct?

A. Moved that old one?

Q. Yes.

204 A. If they hadn't moved that old one they put this other one there to make a new place; that was just—

Q. (Interrupting.) Mr. Matthews, they might have opened seven other stations along that line and you wouldn't say they were moving this thing you call Springbrook over, would you?

Mr. Toner: Objected to as argumentative, not based upon any facts pertaining to this case.

The Court: Sustained.

Mr. Toner:

Q. Do you want us to understand you as swearing that you know of your own personal knowledge that the officials of the railroad company that was operating that road at that time moved a station known as Springbrook to the point which we now call East Springbrook? Do you want to swear to that?

Mr. Craven: Objected to on the ground the witness hasn't testified anything with reference to the officials of that road.

The Court: Over-ruled. I think he is mixed up on whether you mean physically moved the building or just changed the station.

Mr. Toner: We have eliminated the building; we are talking about changing the station. I am trying to find out if he claimed to have any personal knowledge whether they moved the station or not.

205 Mr. Craven: I submit, Your Honor, that the witness already testified fully on the subject, testifying that for year or more they used that as a station. It is conceded that station is now at the new Springbrook.

The Court: Over-ruled.

Mr. Toner:

Q. If you can't answer that question there isn't much use of ing any more.

A. Did they move that one up there down, is that what mean?

Q. I am not talking about any buildings; I am using the word "station," the place; I am asking you if you, of your own knowledge, know, if you want us to understand that you are swearing that you know that the officials that were operating that road at that time moved that station—that means the place for getting on and off passengers—from the place you call Springbrook to the place we now call East Springbrook?

Mr. Craven: The same objection.

The Court: Over-ruled.

A. I don't know whether they moved that or not, that station from that building there.

Mr. Toner:

Q. I wasn't talking about buildings, Mr. Matthews. I exclude those from your consideration. I was referring to the place 206 of getting on and getting off. I was asking you if you know, of your own knowledge that the officials in charge of the road at that time moved the place for getting on and off, from the place you call Springbrook to the place we are now referring to as East Springbrook—do you know of your own knowledge?

Mr. Craven: Objected to, the witness hasn't stated he knew what the officials done; he stated only as to the facts as to the rail company using a certain building about two miles east of East Springbrook for the purpose of receiving and discharging passengers and so forth.

The Court: Over-ruled.

A. No, I don't.

Redirect examination.

By Mr. Craven:

Q. Mr. Matthews, do you know whether or not after a few years or the year that you speak of, that they took on and discharged passengers at what was then known to you as Springbrook, that they then quit taking on passengers at that point and took them on at what is now East Springbrook?

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Mr. Toner: Objected to as leading, calling for a conclusion of the witness.

The Court: Over-ruled.

A. Yes.

207 Recross-examination.

By Mr. Toner:

Q. Do you want us to understand that you are testifying the day they abandoned taking on passengers down at this place that you call Springbrook that they started on taking them on at East Springbrook?

A. Well about that time, Yes.

Q. About that time, what does that mean? Does that mean a year or three months or what?

A. Well, I can't just say.

Q. They started some time afterward taking on passengers up at the other place?

A. Sure.

Mr. Craven: I think that is all of our case except that we have sent to the General Land Office for a certified copy of John Welo who filed on this land on April 24th, 1900 and relinquished the filing in May, 1901.

Mr. Toner: You don't claim any title through him, do you?

Mr. Craven: We wish to bring that in in connection—it comes in connection with the rebuttal testimony of the evidence introduced by plaintiff in this case wherein their certificates or their maps show that the Secretary approved them subject to existing rights, and if there were any existing rights at that time we wish to show them.

Mr. Toner: When a relinquishment takes place the land 208 becomes again property of the United States and any rights that exist at that time become extinguished.

Mr. Craven: We offer in evidence Exhibit Five being certified copy of the filing application of one John Welo covering the forty acres of land in question located in Section 18, being the certified copy of the application for filing of John Welo made April 24th, 1900, and the acceptance thereof, which was made at the United States Land Office at Minot.

Mr. Toner: Objected to as incompetent, irrelevant and immaterial, not within the pleadings or issues in this case, the proof or absence in the record of such proof having no effect on the result of this law-suit.

The Court: Over-ruled.

Mr. Owens: We offer in evidence Exhibit Six being certified copy from the General Land Office at Washington of the relinquishment made by John Welo to this land in May, 1901.

Mr. Toner: To which plaintiff offers the same objection as to the last previous offer.

The Court: Over-ruled.

Mr. Craven: Defendants rest.
Mr. Owens: Defendants rest.

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Rebuttal for Plaintiff.

W. P. STEVENSON called in rebuttal for plaintiff, testified as follows:

Direct examination.

By Mr. Toner:

Q. There has been some testimony both on our side and the other side about two fences that have been erected outside of the platted portion of East Springbrook. Have you hear that?

A. I did, Yes, Sir.

Q. Did your department or you make any surveys in connection with the erection of those fences?

A. I didn't, No, Sir.

Q. The places on the plat of East Springbrook which are designated as "streets" all of them, with one exception, are not parallel to the right of way of the railway company there, is that true?

A. That is true, Yes, Sir.

Q. And the one that is parallel is the one that the witness testifies that it had not been used since 1908, called on the plat "Front Street"?

A. Yes, Sir, that is the street.

Q. That is the only one, is it?

A. Yes, Sir.

Q. The other streets come at the right of way at an angle, that is in other words, again, they are not parallel—they reach the right of way at an angle?

A. Yes, Sir.

210 Q. And like any other highway the road approaching the right of way of the railroad, if there is a crossing there whether it is one hundred feet wide, the property of the railway company, or five hundred feet wide, of course, it goes over?

A. Yes, Sir.

Q. Now, as a town, and from a mere business standpoint is East Springbrook of any importance from a railroad standpoint?

Mr. Craven: Objected to as irrelevant and immaterial.

The Court: Sustained.

Mr. Toner:

Q. There was testimony given here about a dispatcher or night man being maintained at East Springbrook. I will ask you why such a man is kept there?

A. Because it is an important telegraph station, dispatch station.

Q. Is that with reference to the fact of the town of Springbrook or with reference to operation of trains?

A. To the operation and movement of trains.

Q. And not necessarily trains that stop there at all?

A. No, Sir.

Q. And whether there were any buildings there at all or not it would still have that importance, I suppose, in the operation of trains on account of its location?

A. It would, Yes, Sir.

Mr. Toner: Plaintiff rests.

211 I, E. E. Hanyen, hereby certify that at the date of the above mentioned hearing I was official stenographer of the Fifth Judicial District of North Dakota, and that I am now the official stenographer of the Seventh Judicial District of the State of Montana; that I correctly took in shorthand all of the testimony and proceedings had at said trial; and that the within and foregoing is a true, correct and complete transcript of all of said testimony and proceedings, and that said foregoing transcript is a true and correct record of everything which it purports to contain.

Dated this 14th day of January, 1921.

E. E. HANYEN,
*Official Stenographer of the Seventh
 Judicial District of the State of
 Montana, Formerly Official Stenog-
 rapher of the Fifth Judicial Dis-
 trict of the State of North Dakota.*

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214 STATE OF NORTH DAKOTA,

County of Williams:

In District Court, Fifth Judicial District.

(Title as Last Above.)

Findings of Fact, Conclusions of Law, and Order for Judgment.

The above entitled action having come on regularly for trial, and was tried before the Court, without a jury, Hon. Frank E. Fisk, Judge, presiding, beginning on the 25th day of May, 1920; plaintiff appeared by its representatives and by Murphy & Toner, represented by Mr. Toner, its attorneys; defendants Spring Brook State Bank, Spring Brook Trading Company, Frank M. Craig and Nancy Craig and each of them appeared in person and by Craven & Converse, represented by Mr. Craven, their attorneys; defendants Vivian H. Steinke, Paul E. Steinke, Henry Graichen, Emma L. Schartle, Verlie L. Schartle, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston and Daniel Jacobson appeared in person and by Wm. G. Owens, their attorney; and after hearing *a* all the testimony adduced by the respective parties and briefs of Counsel thereafter submitted and being fully advised the Court, in addition to the facts admitted by the pleadings herein, makes and finds the following:

Findings of Facts.

I.

That on and about the 6th, day of April, 1880, the St. Paul, Minneapolis and Manitoba Railway Company duly filed in the office of the Secretary of the Interior due proofs of incorporation which was duly approved authorizing said Company to become a grantee of public lands for right-of-way and Station Grounds in what was then Dakota Territory under the Act of Congress of March 3d, 1875, and acts amendatory thereof.

II.

That thereafter said Railway Company aforesaid on or about December 14th, 1886, definitely located a line of route for its main line of railroad over and across what is now Township 155, North of Range 99 West, and that thereafter and between the 15th, day of October, 1886, and the 28th day of May, 1887, said Railroad Company aforesaid actually constructed its main line through said Township and upon the line of route so selected; and that said railroad so constructed passed over and across the (N. W. $\frac{1}{4}$) Northwest quarter of the (N. E. $\frac{1}{4}$) Northeast quarter of Section Eighteen (18) and also over and across the Northwest quarter (N. W. $\frac{1}{4}$) and Southwest quarter (S. W. $\frac{1}{4}$) of Section Four (4), and the East half (E. $\frac{1}{2}$) of the Southeast quarter (S. E. $\frac{1}{4}$) of Section Five (5), said Township and Range aforesaid. That on the 2d day of July 1887, the Secretary of the Interior, under the act of March 3, 1875, entitled an act granting to Railroads the right-of-way through public lands, duly approved the selection of line of route and said Railroad Company aforesaid duly acquired title grant of a Right of Way proper to the extent of two hundred feet (200 ft.) in width over and across the above described lands. That said lands, however, at the date of said grant were unsurveyed government lands.

That the line of route and right of way aforesaid is correctly shown on Exhibit "B" hereinafter referred to.

That when said Railroad was so built, and for some years thereafter, its Station "Spring Brook" was then located on the said lands hereinbefore described in Sections Four (4) and Five (5) aforesaid.

III.

That on February 1, 1890, the said St. P. M. & M. Ry. aforesaid and the plaintiff Railway Company entered into an agreement of lease, so designated, wherein and whereby said St. P. M. & M. Ry. leased and transferred to said plaintiff for the stated period of 999 years this said line and all other lines of Railway and Railway properties described in that certain deed hereinafter referred to, and on said 1st day of February 1890 said St. P. M. & M. Ry. sur-

rendered possession and control of all said Railways and properties to said plaintiff and said plaintiff at all times thereafter had and retained possession and control of all thereof; and that on the 11th day of October, 1907, the said St. P. M. & M. Ry. Company, made, executed and delivered to plaintiff another writing designated a deed thereto.

IV.

That after said lands along said line of route and right of way aforesaid had been surveyed by the Government, and on, 216 to-wit: September 3, 1898, said St. P. M. & M. Ry. Co., filed in the United States Land Office at Minot a duplicate of its said map of definite location of its line of route and right of way aforesaid and also as a part of said duplicate map, and indicated and described thereupon, selected and applied for the additional grant, under said law, of a certain twenty (20) acre tract of Government land, adjoining its said right of way and Spring Brook Station aforesaid, located in said lands above described in said Sections Four (4) and Five (5) aforesaid, as and for Additional Station Grounds for its said Station of Spring Brook.

That thereafter and on, to-wit, the 10th day of July 1899, said duplicate map of line of route and selection and application for said twenty (20) acres Additional Station Grounds aforesaid was presented to and in all things approved by the said Secretary of the Interior, and title grant to said twenty (20) acres Additional Station Grounds aforesaid, and more particularly described in said duplicate map and application Exhibit "B" vested in said St. P. M. & M. Ry. Co., at or about the date of the approval aforesaid, and said Railway Company accepted and received the same.

V.

That on April 24th, 1900, one John Welo duly applied for and received a valid homestead entry of and to the East half (E. $\frac{1}{2}$) of the Northwest Quarter (N. W. $\frac{1}{4}$), and West Half of the Northeast Quarter (W. $\frac{1}{2}$ N. E. $\frac{1}{4}$) of Section Eighteen, (18), Township One Hundred Fifty-five (155) N. of Range Ninety-nine (99) W. from the United States Land Office at Minot, N. D., and he, said Welo, then received the Receivers' receipt for the same.

That said Welo filing and homestead entry remained alive and was recognized by the Department as a valid subsisting entry, and it was such, at all times thereafter until said Entry was by said Welo relinquished, and cancelled by the Department on or about the 13th, day of December, 1901.

VI.

That at some time prior to the year 1899, (the exact date is not shown by the evidence), the Station Spring Brook located as aforesaid in said Sections Four (4) and Five (5) was changed or 217 abandoned and the Station Spring Brook was re-located, and depot established on the Right-of-way ground proper in

the Northeast quarter (N. E. $\frac{1}{4}$) of Northwest quarter (N. W. $\frac{1}{4}$) of said Section Eighteen (18), where said depot has ever since been and now is maintained.

That the said St. P. M. & M. Ry. Co., on January 12th, 1900, caused to be filed in the United States Land Office at Minot a Station Ground Plat but this said Plat was withdrawn from said office, at some time and for purposes not shown by the evidence, and was not again returned to nor filed in said Land Office until July 18th, 1900, when the officials of said Land Office indorsed thereon the following:

"U. S. Land Office,

Minot, N. Dak.

Received and refiled July 18th, 1900, at 9 A. M. The land embraced in this selection is all vacant except E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ Sec. 18, tp. 155 Rg. 99.

THOMAS E. OLSGARD,

Register.

ABNER L. HANSCOM,

Receiver.

That upon the face of said Plat said St. P. M. & M. Ry. Co., petitioned the Department for a further grant of twenty (20) acres of land, being the lands claimed to be owned by this plaintiff and described in said complaint, for Additional Station Grounds for its said Station Spring Brook. That, as is shown on the face of said Application aforesaid, the said lands sought to be acquired—

"is selected in lieu of a tract containing twenty acres in the N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of Section 4 and the E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Section 5, Township 155 North of Range 99 West the plat of which was approved by the Secretary of the Interior July 10th, 1899."

That said Plat and Application last aforesaid, however, was not presented to the Secretary of the Interior until October 18th, 1900, when the said Secretary indorsed thereon the following words over his signature, namely:

"Department of the Interior,

Oct. 18, 1900.

Approved subject to all valid existing rights,

E. A. HITCHCOCK,

Secretary.

218 There is, however, no evidence in this case showing or tending to show that said Plat last aforesaid at any time after being so indorsed by the Secretary as aforesaid was with said indorsement filed in said Land Office at Minot; and this Court finds no notice of withdrawal of the said lands, nor any profile map or plat thereof or other instrument whatever, approved by said Secretary, has ever been filed in said Land Office at Minot, N. D.

VII.

That on the 20th, day of August, 1902, one Philander Pollock applied for and received a valid homestead entry of and to the said East half E. $\frac{1}{2}$ of the Northwest quarter (N. W. $\frac{1}{4}$) of the West half (W. $\frac{1}{2}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of said Section Eighteen (18) from the United States Land Office at Minot, and he, said Pollock, then received the Receiver's Receipt for all said lands, which said homestead entry was subject however to the said Right-of-Way proper of said Railway Company, theretofore granted as hereinbefore stated. That said homestead entryman, Pollock, in good faith duly settled and established his residence on said lands on or about the 30th, day of August, 1902; but on the 1st, day of June, 1903, he, said Pollock, relinquished his said entry to the Northwest quarter (N. W. $\frac{1}{4}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of said Section Eighteen (18), and at the same time said Pollock applied for and was by the Department granted the said Northwest quarter (N. W. $\frac{1}{4}$) of the Northeast Quarter (N. E. $\frac{1}{4}$) Section Eighteen (18) under certain Script then placed thereon; that on or about October 24th, 1903, said Pollock made due and final proof which was allowed to his said homestead lands; and on the 28th, day of February, 1906, the United States executed to said Philander Pollock full patent wherein and whereby the United States conveyed to him in fee the Northwest quarter (N. W. $\frac{1}{4}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of said Section Eighteen (18) aforesaid, and said title was so acquired subject only to the Railway Company's original grant of the Right-of-way proper hereinbefore stated thereover.

Said patent on March 30th, 1906, was filed for record in the 219 office of the Register of Deeds of Williams County, N. D. and therein recorded in Book "A3" on Page 54.

IX.

That on July 9th, 1903, said Philander Pollock caused to be duly platted a certain portion of the said Northwest quarter (N. W. $\frac{1}{4}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of said Section Eighteen (18), into lots and blocks, and thereby dedicated to the public certain streets and Alleys, all of which is more fully shown by the original plat thereof, designated East Spring Brook, Marked Exhibit 1 and introduced in evidence; which said plat on the 9th, of July, 1903, was filed for record in the office of the Register of Deeds of Williams County, and the same ever since has been so filed and of record. And the Village of East Spring Brook has since been and now is duly incorporated.

X.

That on February 13, 1906, said Philander Pollock, and Nicholas W. Comfort, by good and sufficient deed, conveyed title in fee to Lots One, (1) and Two (2) and Three (3) Block Eight (8), of said East Spring Brook aforesaid, according to said Plat thereof so filed, to R. H. Kingston, and on March 12, 1906, said Kingston likewise con-

veyed title in fee to said Lots One (1) and Two (2) aforesaid to Meyers Lumber Company, a corporation, and on July 15, 1913, said Meyers Lumber Company likewise conveyed title in fee to said Lots One (1) and Two (2) aforesaid to Defendant Spring Brook State Bank.

And that on March 30, 1906, said R. H. Kingston, likewise, conveyed title in fee to said Lot Three (3), Block Eight, (8) aforesaid unto Gertrude Ulrich; and on July 23, 1907, said Gertrude Ulrich, likewise, conveyed title in fee to said Lot Three (3) Block Eight (8) to Eli Kingston and Charles E. Ulrich; and on January 30, 1911 said Charles E. Ulrich, likewise, conveyed title in fee to said Lot Three (3), Block eight (8) to Eli Kingston; and on April 29, 1915 said Eli Kingston conveyed title in fee to said Lot Three (3) Block Eight (8) to defendant, Spring Brook Trading Company.

That April 3, 1906 said Philander Pollock and Nicholas W. Comfort by good and sufficient deed, conveyed title in fee to Lots three (3) and four (4) Block seven (7) of East Spring Brook aforesaid, according to said plat thereof so filed, Frank M. Craig and B. S. Marple and on October 9, 1903 said B. S. Marple, likewise, conveyed said lots aforesaid to said Frank M. Craig who is one of the defendants.

That on August 31, 1906, said Philander Pollock and Nicholas W. Comfort, by good and sufficient deed, conveyed title in fee to Lot One (1) Block One (1) of East Spring Brook aforesaid, according to said plat thereof so filed, to said defendant Henry Graichen; and on April 3, 1903, said Philander Pollock and Nicholas W. Comfort, likewise, conveyed title in fee to Lots Two (2) Seventeen (17) and Eighteen (18) of said Block One (1) aforesaid to defendant Emma L. Schartle; that on August 25, 1914, said Emma L. Schartle, likewise, conveyed title in fee to said Lot Two (2) Block One (1) to the defendant Henry Graichen.

That on October 23, 1906, said Philander Pollock and Nicholas W. Comfort, by good and sufficient deed, conveyed title in fee to Lot One (1) Block Seven (7) of East Spring Brook aforesaid, according to said plat thereof so filed, to one Berry Marple; and on February 11, 1907, said Barry Marple, likewise, conveyed title in fee to said Lot One (1) Block seven (7) to defendant Daniel Jacobson.

That on March 30, 1906, Philander Pollock and Nicholas W. Comfort by good and sufficient deed, conveyed title in fee to Lot fourteen (14) Block One (1) East Spring Brook aforesaid, according to the plat thereof so filed, to Wilfert P. Versoi; and on August 16, 1916, said Wilfert P. Versio, likewise, conveyed title in fee to said Lot Fourteen (14) Block One (1) aforesaid to defendants Everett A. Webster and Walter T. Webster.

That on March 30, 1906, said Philander Pollock and Nicholas W. Comfort, by good and sufficient deed, conveyed title in fee to Lot Sixteen (16) Block One (1) of East Spring Brook aforesaid, according to the said plot thereof so filed, to defendant Eli Kingston.

That on March 31, 1905, said Philander Pollock and Nicholas W. Comfort, by good and sufficient deed, conveyed title in fee to Lot Fifteen (15) Block One (1) aforesaid to one

John B. McClure; and on August 17, 1908, said John B. McClure likewise, conveyed title in fee to said Lot Fifteen (15) Block One (1) aforesaid to said defendant Eli Kingston.

That on May 13, 1907, Philander Pollock, by good and sufficient deed, conveyed an undivided one half interest in fee in and to all the unplatte portion of the Northwest Quarter (N. W. $\frac{1}{4}$) of the Northeast Quarter (N. E. $\frac{1}{4}$) of said Section Eighteen (18) aforesaid to Nicholas W. Comfort, and on February 27, 1909, likewise, conveyed the whole title in fee to the last above described lands to said Nicholas W. Comfort; and in the meantime said Comfort having died, the County Court of Mountrail County, having duly acquired jurisdiction of the estate of said Nicholas W. Comfort deceased, on January 7, 1916, made and entered its Final Decree in said estate wherein and whereby, among other things, it is adjudged that the said deceased died seized of said lands aforesaid, and that Elizabeth Comford, widow of said deceased, became and is the owner in fee of the said unplatte portion of the Northwest Quarter (N. W. $\frac{1}{4}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of said Section Eighteen (18) aforesaid; and that on July 15th, 1916, said Elizabeth Comford, by good and sufficient deed, conveyed to defendant Vivian H. Steinke, title in fee to all that part of the said unplatte portion of the said Northwest quarter (N. W. $\frac{1}{4}$) of the Northeast Quarter (N. E. $\frac{1}{4}$) of said Section Eighteen (18) which said portion so conveyed is bounded on the north by the southerly boundary line of plaintiff's said original right of way and contains all the unplatte portion of said Northwest quarter (N. W. $\frac{1}{4}$) of the Northeast quarter (N. E. $\frac{1}{4}$) lying to the south of said original right of way aforesaid; upon which tract of land last aforesaid the defendant Spring Brook State Bank was given and holds a valid mortage lien.

XI.

That each and every of the said deeds of conveyance aforesaid was on or about the date thereof duly recorded in the office of the Register of Deeds of Williams County, North Dakota; that the said lands

222 in dispute were yearly from and after they were so platted into lots and blocks as aforesaid regularly assessed and subjected to taxes for State, County, Town and School purposes, which said taxes were levied against said lands, and in the name of said individual owners respectively, and the said taxes so assessed and levied were by the defendants and their grantors respectively, paid.

That each of said defendants respectively as aforesaid so purchased the said lands aforesaid in good faith for value paid, under a deed and chain of title fair on its face, and so purchased the said lots with reference to and relying on the public Streets and Alleys so dedicated to public use, as shown on said Plat of East Spring Brook so filed as aforesaid; which public streets ever since about the year 1903 have been maintained and kept up at public expense, and used by the public as public highways; that none of said defendants, nor their grantors, had any notice or knowledge of plaintiff's alleged claim of title to the lands in dispute until on or about May

1st, 1917, when plaintiff caused a notice to vacate to be served on certain of the defendants, and caused a fence to be erected on or along the southerly boundary line of the lands in dispute outside of the platted portion of said lands.

That defendant Frank M. Craig in 1906, under the said deeds aforesaid took, and thereafter at all times held, actual open adverse and undisputed possession of all said lots Three (3) and Four (4) Block Seven (7) and from and since 1907 to 1919 has paid all taxes and assessments legally levied thereon. That, in good faith, he, said Craig, in the years 1906 and 1907 permanently improved said lots by the building and erecting thereon of a two story hotel building, of the dimensions and located as indicated on Exhibit "A", and otherwise improved said property during and subsequent to said years, and expended in so doing upwards of Two Thousand Dollars, \$2,000.00; and that continuously from 1907 to about one year or so ago said premises were used for hotel purposes.

That Spring Brook Trading Company and its grantor, Eli Kingston, under color of title aforesaid, in 1907 took, and thereafter at all times held, actual open, adverse and undisputed possession of said Lot Three, (3) Block Eight (8), aforesaid, and likewise has from and since paid all taxes thereon. That in good faith said Eli Kingston permanently improved said lot on or about 1907 by building a store building thereon, and otherwise improving said lot, that said store building from and after it was so erected was occupied for store purposes for many years and until said building was destroyed by fire about 1916, that said building was so built and on a stone foundation and had thereunder a large basement which are now on said property.

That said Spring Brook State Bank and its grantors Meyers Lumber Company, under color of title aforesaid, in 1906 took, and thereafter at all times held, actual, open, adverse and undisputed possession of said Lots One (1) and Two (2) Block Eight (8) aforesaid, and from and likewise since 1907 yearly has paid taxes thereon; that in good faith in the year 1907 and subsequently thereto said Meyers Lumber Company permanently improved said lots by the erection thereon of a one story office building and Lumber yard sheds, fences, and other improvements of the dimensions and at the location as shown on said Exhibit "A"; and on and subsequently to 1913 said Bank and Trading Company likewise further permanently improved said Lots One (1), Two (2) and Three (3), Block Eight (8) by improving and extending said Lumber sheds and buildings, and enclosing all of said lots by picket lumber yard fence, as indicated on Exhibit "G"; That ever since 1907 said lots One and Two (1 & 2) have been used for general Lumber yard purposes as has said Lot Three (3) Block Eight (8) since it ceased to be used for store purposes as aforesaid.

That defendant Daniel Jacobson in 1907, under his said deed aforesaid, took, and thereafter at all times held, actual, open, adverse and undisputed possession of all said Lot One (1) Block Seven (7) aforesaid, and from and since 1907 to 1919 has paid all taxes and assessments legally levied thereon. That in 1906 his grantor,

Marpel, had permanently improved said Lot by erecting thereon a one story store building, which building was of the dimensions and located as indicated on said Exhibit "A"; and said building was from 1907 down to about 1916 used for business purposes, 224 it having been used for pool hall, Drug store and General Store, at times. Said building so remained upon said Lot until 1919 when the same was removed therefrom by said Jacobson.

That defendant Eli Kingston in 1906, under his said deed aforesaid took, and thereafter at all times, held, actual, open, adverse and undisputed possession of said Lot Sixteen (16) Block One (1) aforesaid; that on or about 1906 he permanently improved said Lot by the building thereon a one and one-half story dwelling house, and other improvements, the dimensions and location of said dwelling house is shown on said Exhibit "A"; that in 1908 said Kingston purchased and likewise took and held possession of Lot Fifteen (15) Block One (1); and that ever since the said dwelling and grounds was so built the same has been used for residence purposes at all times until about 1918.

That defendant Henry Graichen in 1906, under his said deed aforesaid in good faith took, and thereafter at all times held, actual open, adverse and undisputed possession of all of Lot One (1) Block One (1) aforesaid, and from and since 1907 to 1919 has paid all taxes and assessments legally levied thereon; that in 1906 and 1907 said Graichen permanently improved said Lot by erecting thereon a two story storebuilding and a one story warehouse building, and other improvements, at a cost of over Two Thousand One Hundred Fifty Dollars, (\$2,150.00) that from and since 1907 said buildings and premises have at all times been used for general hardware store purpose and farm implement business, as has been said Lot Two (2) Block One (1) since 1914.

XII.

That the said St. Paul, Minneapolis and Manitoba Railway Company, nor said plaintiff, ever at any time had been in possession of any part or portion of the said lands, in dispute nor have said Companies or either of them ever at any time taken the rents and profits, or either, of said lands or any part or portion of said lands; nor has said Companies nor either thereof ever in any — improved or used any part or portion of the said lands in dispute, save only on or about 1917, while said defendant Vivian H. Steinke so held possession of her said lands, plaintiff entered thereon and erected the fence hereinbefore referred to.

That the said deed, Exhibit "E," nor any deed or conveyance whatsoever, covering the lands in dispute or any part thereof, to plaintiff or to the said St. P. M. and M. Ry. Co., has ever been filed in the office of the Register of Deeds of Williams County, North Dakota, the County where said lands in dispute is situated;

and no part or portion of the lands in dispute has ever been used as or for Right-of-way for said Railroad.

XIV.

That the nature and extent of the alleged claim asserted by the said parties to this action to the lands described in the complaint and answers respectively is:

That the plaintiff claims under that certain deed Exhibit "E" from the St. P. M. & M. Ry. Co., and claims said last named Co., under its said application for Additional Station Grounds referred to and set forth in paragraph Six of these findings, received a grant of the lands in dispute from the United States for Additional Station Grounds purposes. But as shown by the foregoing findings of fact said alleged grant wholly failed and never had any force or effect.

That said defendants, and each of them, claim and derive titles under the deeds of conveyance hereinbefore referred to, and derive their respective titles through Philander Pollock, the patentee of said lands from the United States; and that each of defendants' said titles to the land in dispute are valid; and their validity may be based on said record chain of title aforesaid as well as on other grounds covered by the foregoing findings of fact.

From the foregoing findings of fact the Court deduces and draws the following:

Conclusions of Law.

I.

That defendant Spring Brook State Bank is, and at all times since July 15, 1913, has been, the owner in fee and entitled to the possession of all of Lots One (1) and Two (2), Block Eight (8) of East Spring Brook, Williams County North Dakota;

226 That defendant Spring Brook Trading Company is and at all times since April 29, 1915, has been the owner in fee and entitled to the possession of all of Lot Three (3) Block Eight (8) of East Spring Brook aforesaid;

That defendant Frank M. Craig is, and at all times since October 9, 1906, has been the owner in fee and entitled to the possession of all of Lots Three (3) and Four (4) of Block Seven (7) of East Spring Brook aforesaid;

That defendant Henry Graichen is, and at all times since August 31st, 1906, has been, the owner in fee and entitled to the possession of all of Lot One (1) Block One (1) of East Spring Brook aforesaid; and that defendant Henry Graichen is, and at all times since August 24, 1911, has been, the owner in fee and entitled to the possession of all of Lot Two (2) Block One (1) of East Spring Brook aforesaid;

That defendant Emma L. Sehartle is, and at all times since April 3, 1906, has been, the owner in fee and entitled to the possession of

all of Lots Seventeen (17) and Eighteen (18) Block One (1) of East Spring Brook aforesaid;

That defendant Daniel Jacobson is, and at all times since February 11, 1907, has been, the owner in fee and entitled to the possession of all of Lot One (1) Block Seven (7) of East Spring Brook aforesaid;

That defendants Everett A. Webster and Walter T. Webster are, and at all times since August 16, 1916, have been, the owners in fee and entitled to possession of all of Lot Fourteen (14) Block One (1) of East Spring Brook Aforesaid;

That defendant Eli Kingston is, and at all times since March 30, 1903, has been, the owner in fee and entitled to the possession of all of Lot Sixteen (16) Block One (1) of East Spring Brook aforesaid; and that said defendant Eli Kingston is, and at all times since August 17, 1908, has been the owner in fee and entitled to possession of all of Lot Fifteen (15) Block One (1) of East Spring Brook aforesaid;

That defendant Vivian H. Steinke is, and at all times since 227 July 15th, 1916, has been, the owner in fee and entitled to possession of all that part of the unplatte portion of the Northwest quarter (N. W. $\frac{1}{4}$) of the Northeast quarter (N. E. $\frac{1}{4}$) of Section Eighteen (18) Township One Hundred Fifty-five North (155 N.) of Range Ninety-nine West (99 W.), lying south of the southerly boundary line of the original right of way proper of the Great Northern Railway Company as said right of way is now located over and across said Section aforesaid; and

That defendant Spring Brook State Bank has, and prior to the commencement of the above entitled action has had, a valid and subsisting mortgage lien covering the said lands hereinbefore last described and so owned by said defendant Vivian H. Steinke.

That plaintiff, The Great Northern Railway Company has never had and has not now any right title or interest in or to said lands and premises hereinbefore in these Conclusions of Law described; and that said Company is not now and never has been entitled to the possession of said lands and premises or any part thereof; that the title to said lands and premises respectively, be and is hereby forever quieted in the said answering defendants, respectively, against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

II.

That said answering defendants have and are hereby awarded against said plaintiff costs and disbursements, to be taxed and allowed by the Clerk of this Court.

III.

It is Ordered that Judgment be entered accordingly.

Dated at Williston, North Dakota, this 11th day of September, A. D. 1920.

By the Court,

FRANK E. FISK,
*As Judge of the 5th, Judicial
District of North Dakota.*

[Endorsed:] Filed September 11, 1920.

228 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, Fifth Judicial District.

(Title as Last Above.)

Affidavit of Costs and Disbursements.

STATE OF NORTH DAKOTA,
County of Williams, ss:

Thos. F. Craven, being first duly sworn on oath states that he is one of the attorneys for defendants in the above entitled action and that the following items of costs and disbursements have been necessarily incurred by the defendants in this action and are allowed to the defendants by law:

Statutory costs.....	\$13.00
J. C. Stewart, Witness.....	2.00
Jacob Widmann, "	5.50
K. Mathews, "	2.00
Total	\$22.50

THOS. F. CRAVEN.

Subscribed and sworn to before me this 7th day of October, 1920.

A. L. BUTLER,
Notary Public, North Dakota.

My commission expires Sept. 12, 1925.

[Endorsed:] Filed Oct. 7, 1920.

229 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, Fifth Judicial District.

(Title as Last Above.)

Judgment.

The above entitled cause having been duly brought on for trial and was tried by and before said Court, Hon. Frank E. Fisk Judge

presiding, and the Court having heretofore made and filed its findings of fact, conclusions of law and order for judgment therein, and thereby directed judgment for defendants Spring Brook State Bank, Spring Brook Trading Company, Frank M. Craig, Henry Graichen, Emma L. Schartle, Daniel Jacobson, Everett A. Webster and Walter T. Webster, Eli Kingston and Vivian H. Steinke, and each of them against said plaintiff.

Now Therefore, pursuant to said findings of fact, conclusions of law and order for judgment aforesaid and, on motion of Craven & Converse and Wm. G. Owens, attorneys for said answering defendants,

It is adjudged and decreed. That the defendant Spring Brook State Bank, a corporation, at the time of the commencement of this action and at all times since July 15th, 1913, was, and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of Lots One (1), and Two (2), of Block Eight (8), of East Spring Brook, Williams County, North Dakota; and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said Spring Brook State Bank against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

It is further adjudged and decreed. That the defendant the Spring Book Trading Company, a corporation, at the time of the commencement of this action and at all times since April 29th, 1915, was, and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of Lot Three (3) Block Eight (8) of East Spring Brook, Williams County, North Dakota; and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said Spring Brook Trading Company against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

It is further adjudged and decreed. That defendant Frank M. Craig at the time of the commencement of this action and at all times since October 9th, 1906, was, and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of Lots Three (3) and Four (4) of Block Seven (7) of East Spring Brook, Williams County, North Dakota, and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said defendant, Frank M. Craig, against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

230 It is further adjudged and decreed. That defendant Henry Graichen at the time of the commencement of this action and at all times since August 31st, 1906, was and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of Lot One (1) Block One (1) of East Spring Brook, Williams County, North Dakota; and it is further adjudged that said defendant, Henry Graichen, at the time of the commencement of this action and at all times since August 24th, 1914, was and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of Lot Two (2) Block One (1) of East Spring

Brook, Williams County, North Dakota, and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said defendant, Henry Graichen, against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

It is further adjudged and decreed. That defendant Emma L. Schartle at the time of the commencement of this action and at all times since April 3, 1906, was, and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of Lots Seventeen (17) and Eighteen (18) of Block One (1) of East Spring Brook, Williams County, North Dakota; and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said defendant, Emma L. Schartle, against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

It is further adjudged and decreed. That defendant Daniel Jacobson at the time of the commencement of this action and at all times since February 11th, 1907, was, and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of Lot One (1) Block Seven (7) of East Spring Brook, Williams County, North Dakota; and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said defendant, Daniel Jacobson, against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

It is further adjudged and decreed. That defendants Everett A. Webster and Walter T. Webster at the time of the commencement of this action and at all times since August 16th, 1916, were, and now are, the owners in fee simple absolute, and entitled to the exclusive possession of all of Lot Fourteen (14) Block One (1) of East Spring Brook, Williams County, North Dakota; and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said defendants, Everett A. Webster and Walter T. Webster, against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

It is further adjudged and decreed. That defendant Eli Kingston at the time of the commencement of this action and at all times since March 30th, 1906, was, and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of Lot Sixteen (16) Block One (1) of East Spring Brook, Williams County, North Dakota; and it is further adjudged and decreed that defendant, Eli Kingston, at the time of the commencement of this action and at all times since August 17th, 1908, was, and now is the owner in fee simple absolute, and entitled to the exclusive possession of all of Lot Fifteen (15) Block One (1) of East Spring Brook, Williams County, North Dakota; and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said defendant, Eli Kingston, against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

It is further adjudged and decreed. That Vivian H. Steinke at the time of the commencement of this action and at all times since

July 15th, 1916, was and now is, the owner in fee simple absolute, and entitled to the exclusive possession of all of that part of the unplattoned portion of the Northwest quarter of the Northeast quarter (N. W. 1/4 N. E. 1/4) of Section Eighteen (18) Township One Hundred Fifty-five (155) North of Range Ninety-nine (99) West lying South of the Southerly Boundary line of the original right of way proper of the Great Northern Railway Company, as said right of way is now located over and across said Section aforesaid, and it is further adjudged and decreed that the defendant the Spring Brook State Bank, at the time of the commencement of this action had and now has a valid and subsisting mortgage lien covering 232 all of the said lands hereinbefore last described and so owned by said defendant Vivian H. Steinke, and that the title to said lands and premises aforesaid be and is hereby forever quieted in the said defendant, Vivian H. Steinke, against said plaintiff and all persons claiming or to claim the same or any part thereof under or through said plaintiff.

It is further adjudged and decreed, That the plaintiff the Great Northern Railway Company never at any time had and has not now any right, title or interest in or to said lands or premises hereinbefore particularly described and that said Company is not now and never has been entitled to the possession of said lands or premises hereinbefore described or any part or portion thereof; and it is further adjudged and decreed that said plaintiff, the Great Northern Railway Company, and all persons claiming or to claim under said Company be and they are hereby forever barred from any and all claim of right or title to said lands hereinbefore particularly described or in or to any part thereof.

It is further adjudged and decreed, That defendants, Spring Brook State Bank, Spring Brook Trading Company, Frank M. Craig, Vivian H. Steinke, Henry Graichen, Emma L. Scharts, Everett A. Webster and Walter T. Webster, Eli Kingston and Daniel Jacobson and each of them do have and recover of the plaintiff, the Great Northern Railway Company, their costs and disbursements of this action taxed at Twenty-two & 50/100 Dollars.

Witness the Honorable Frank E. Fisk, Judge of the Fifth Judicial District, and my hand and the seal of the District Court of Williams County, North Dakota, this 7th, day of October, 1920.

J. O. SIEBERT,
Clerk of the District Court.

I, J. O. Siebert, Clerk of the District Court of Williams County, North Dakota, hereby certify that the foregoing is a true and correct copy of the judgment and decree entered in Book F of Judgments at Page 258.

J. O. SIEBERT,
Clerk of the District Court.

233 STATE OF NORTH CAROLINA,
County of Williams:

In District Court, Fifth Judicial District.

(Title as Last Above.)

Notice of Taxation of Costs.

To Messrs. Murphy & Toner,
 Attorneys for Plaintiff:

Please take Notice that on the — day of October, 1920, the costs in the above entitled action were taxed and allowed by the Clerk of this Court as itemized and set forth in the attached affidavit of Costs and Disbursements and entered in a judgment in favor of defendants and against plaintiff, and that said Costs will be re-taxed by the Clerk of said Court on the 22nd day of October, 1920, at the hour of ten o'clock in the forenoon.

Dated October 8th, 1920,

WM. G. OWENS &
 CRAVEN & CONVERSE,
Attorneys for Defendants.

Office and Post Office Address, Williston, North Dakota.

234 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, Fifth Judicial District.

(Title as Last Above.)

Affidavit of Costs and Disbursements.

STATE OF NORTH DAKOTA,
County of Williams, ss:

Thos. F. Craven, being first duly sworn on oath states that he is one of the attorneys for defendants in the above entitled action and that the following items of costs and disbursements have been necessarily incurred by the defendants in this action and are allowed to the defendants by law:

Statutory costs	\$13.00
J. C. Stewart, Witness	2.00
Jacob Widmann, "	5.50
K. Mathews, "	2.00
Total	<u>\$22.50</u>

THOS. F. CRAVEN.

150 **GREAT NORTHERN RY. CO. VS. V. H. STEINKE ET AL.**

Subscribed and sworn to before me this 7th day of October, 1920.

A. L. BUTLER,
Notary Public, North Dakota.

My commission expires Sept. 12, 1925.

[Endorsed:] Filed Nov. 13, 1920.

235 **STATE OF NORTH DAKOTA,**
County of Williams:

In District Court, Fifth Judicial District.

(Title as Last Above.)

Notice of Entry of Judgment.

To said plaintiff and to Murphy &
Toner, attorneys for said plaintiff:

Please Take Notice, That judgment in the above entitled action was entered and docketed in said Court on the Seventh day of October, 1920; that a true and full copy of said Judgment so entered, as well as a true copy of the Findings of Fact, Conclusions of Law and Order for Judgment referred to therein, are hereto attached and herewith served upon you.

Very truly,

CRAVEN & CONVERSE,
Attorneys for said Answering Defendants.

[Endorsed:] Filed November 13, 1920.

236 **STATE OF NORTH DAKOTA,**
County of Williams, ss:

In District Court, Fifth Judicial District.

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Plaintiff,
vs.

VIVIAN H. STEINKE, HENRY GRAICHEN et al., Defendants.

*Order and Certificate Settling Transcript as Statement of the Case
and Identifying Exhibits.*

This matter having come on for hearing upon the application of the plaintiff, Great Northern Railway Company, and after due and proper notice had been served upon the attorneys for the appearing defendants on the 4th, day of February 1921, proof of such service to the satisfaction of the court having been filed herein, and a final hearing having been had upon such application to settle the statement of the case herein and identify the exhibits by the com-

sent in writing of all parties interested, on this 28th day of February 1921, at Williston, N. D.

It is hereby ordered, And the undersigned Judge of said District Court hereby certifies that the annexed written transcript of the evidence and of all other proceedings had and made a matter of record by the official stenographer in said action upon the trial, is a true and correct transcript of such evidence and of all other proceedings had and made a matter of record, and the whole thereof, and that the plat; map and plat; *map and plat*; letter; deed; 8 instruments being homestead entry and proof papers relinquishment and patent; and a plat, are hereby attached, referred to and identified as plaintiff's exhibits respectively in the order named, A, B, C, D, E, F, and G, and the substituted copy of plat, abstract; abstract, notice homestead filing application; and homestead relinquishment are hereby attached referred to and identified as defendants' exhibits respectively in the order named, 1, 2, 3, 4, 5, and 6; such transcript of the evidence consisting of 166 typewritten pages and a certificate and index and said plaintiff's exhibits A, B, C, D, E, F, and G, and defendants' Exhibits 1, 2, 3, 4, 5, and 6 are hereby settled and allowed as and for the statement of the case herein.

Dated at Williston, N. D., this 28th day of February 1921.

JNO. C. LOWE,
Judge District Court.

237 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Fifth Judicial District.

(Title as Last Above.)

Stipulation.

Whereas a notice of settlement of the case in the above entitled action was issued on Feby. 1st, 1921, by the attorneys for plaintiff, and service admitted thereon by the attorneys for the appearing defendants, said notice being returnable at Minot, N. D., on Feby. 18th, 1921 before the Hon. John Lowe, one of the Judges of said court, and giving notice that at that time and place application would be made to said Judge for an order and certificate settling the statement of the case and identifying the exhibits, and whereas by oversight the said matter was not brought to the attention of said Judge at said time and place.

Now therefore it is hereby stipulated that application under said notice for a settlement of the statement of the case and for an order and certificate identifying the exhibits, in the manner and for the purposes set out in said notice may be made to the Hon. John Lowe, Judge of said Court at the Chambers of said Court at the Court House in Williston, Williams County, N. D. on the 28th day of February 1921, at the hour of Two o'clock P. M., of said

— with the same force and effect, as if said application had been made and a certificate and order entered, on Feby. 18th, 1921, at Minot, N. D., by said Judge as in said notice contemplated.

Dated February 28th, 1921.

MURPHY & TONER,

Attorneys for Plaintiff.

CRAVEN & CONVERSE &

WM. G. OWENS,

Attorneys for the Appearing Defendants.

Williston, N. D.

238 STATE OF NORTH DAKOTA,

County of Williams:

In District Court, 5th Judicial District.

(Title as Last Above.)

Notice of Settlement of Statement of Case.

To the above-named defendants and to Craven & Converse and Wm. G. Owens, their attorneys:

You will please take notice that the plaintiff Great Northern Railway Company will on the 18th, day of February 1921 at the hour of 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the chambers of the above named district court in the city of Minot County of Ward State of North Dakota, make application to the Hon. John Lowe Judge of said Court, for an order and certificate settling the annexed transcript of the evidence and all proceedings had and made a matter of record by the official stenographer, a duplicate copy of which is herewith served upon you, as a correct transcript thereof, and as a correct transcript of the statement of the case herein, and at the same time will apply for an order identifying the exhibits in the above entitled action, and attaching them to the transcript and making the whole thereof a statement of the case herein.

Dated Grand Forks, N. D. this 1st, day of February, 1921.

MURPHY & TONER,

Attorneys for Plaintiff.

Due and personal service of the foregoing notice of settlement of the statement of the case, and of the attached transcript of the evidence and other proceedings had and made a matter of record by the official stenographer upon the trial, is hereby admitted by receipt of copies of each thereof at Williston, N. D. this 4th, day of February, 1921.

CRAVEN & CONVERSE &

WM. G. OWENS,

Attorneys for the Appearing Defendants.

[Endorsed:] Filed March 4, 1921.

239 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, Fifth Judicial District.

(Title as Last Above.)

Order.

Upon the affidavit of T. A. Toner dated Feby. 1st, 1921, and good cause shown, and upon all the files, records and proceedings in said action, and upon motion of Murphy & Toner, attorneys for the plaintiff in the above entitled action,

It is ordered that the time within which the plaintiff may have to prepare and settle a statement of the case herein for use upon motion for a new trial, judgment non obstante, or on appeal to the Supreme Court, of the State of North Dakota and to do any and all things in connection therewith is hereby enlarged to and until the 15th day of March 1921. It is further ordered that meanwhile execution on said judgment in favor of the defendants and against the plaintiff be and the same hereby is stayed.

Dated this 8th, day of February 1921.

GEO. H. MOELLRING,
Judge of the District Court.

[Endorsed:] Filed March 5, 1921.

240 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, 5th Judicial District.

(Title as Last Above.)

STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

T. A. Toner being first duly sworn deposes and says that he is one of the attorneys for the plaintiff in the above entitled action. That a transcript of the testimony, etc., in the above entitled action has been ordered from the official stenographer and has just been received at the time of making this affidavit. That the time as extended now expires on Feb. 15, 1921. That affiant is in the midst of a term of court and will not be able to give the matter attention for a number of days. That the statute requires at least fifteen days' notice shall be given of the settlement of the statement of the case, and that it will require some considerable time further than the plaintiff can now have under the last order extending the time in which to settle the transcript as a statement of the case. That the judgment entered in this action is for the possession of certain

real property, and that the defendants are in possession thereof, and that hence no possible injury can occur to them by delay in this matter.

Wherefore affiant asks that the time to settle statement of the case and to take any steps necessary herein, and the making of any motions or the taking of an appeal be extended to and until March 15, 1921, and that meanwhile execution be stayed.

T. A. TONER.

Subscribed and sworn to before me this 1st, day of February 1921.

FRANK KILGERE,
Notary Public, N. D.

[Endorsed:] Filed March 5, 1921.

241 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, 5th Judicial District.

(Title as Last Above.)

Order.

Upon the affidavit of T. A. Toner, dated December 14, 1920, and good cause shown, and upon all the files, records and proceedings in said action, and upon motion of Murphy & Toner, attorneys for the plaintiff in the above entitled action, It is ordered that the time within which the plaintiff may have to prepare and settle statement of the case herein for use upon motion for a new trial, judgment non obstante, or upon appeal to the Supreme Court of the State of North Dakota, and to do any and all things in connection therewith is hereby enlarged to and until the 15th, day of February, 1921.

It is further ordered that meanwhile execution on said judgment in favor of the defendants and against the plaintiff be and the same hereby is stayed.

Dated this 15th, day of December 1920.

FRANK E. FISK,
Judge of District Court.

[Endorsed:] Filed Mar. 5, 1921.

242 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, 5th Judicial District.

(Title as Last Above.)

STATE OF NORTH DAKOTA.
County of Grand Forks, ss:

T. A. Toner being first duly sworn, deposes and says that he is one of the attorneys for plaintiff in the above entitled action. That a transcript of the testimony, etc., in the above entitled action has been ordered from the official stenographer and has not yet been furnished, and affiant verily believes that it will require at least 40 days before such transcript of the testimony and other proceedings can be furnished. That the statute requires that at least 15 days' notice shall be given of the settlement of the statement of the case, and that it will require a period of at least 55 days from this date to settle the transcript as a statement of the case.

Wherefore affiant asks that the time to settle statement of the case, and to take any steps necessary herein, and the making of any motions, or the taking of an appeal, be extended to and until February 15, 1921, and that meanwhile execution be stayed.

Dated Dec. 14, 1920.

T. A. TONER.

Subscribed and sworn to before me Dec. 14, 1920.

FRANK KILGORE,
Notary Public, Grand Forks County, N. D.

[Endorsed:] Filed Mar. 5, 1921.

243 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, 5th Judicial District.

(Title as Last Above.)

Order.

Upon good cause shown and upon the affidavit of T. A. Toner dated October 19th, 1920, and upon all the files, records and proceedings in said action, and upon *action* of Murphy & Toner, attorneys for the plaintiff in the above entitled action,

It is ordered that the time within which the Plaintiff may have to prepare and settle a statement of the case herein, for use upon motion for a new trial, judgment non obstante, or upon appeal to

the supreme court of the State of North Dakota, and to do any and all things in connection therewith is hereby enlarged to and until the 20th day of December 1920. It is further ordered that meanwhile execution on said judgment in favor of the defendants and against the plaintiff be and the same hereby is stayed.

Dated this 20th day of October, 1920.

FRANK E. FISK,
Judge of District Court.

[Endorsed:] Filed Mar. 5, 1921.

241 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, 5th Judicial District,

(Title as Last Above.)

STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

T. A. Toner being first duly sworn on oath, deposes and says that he is one of the attorneys for plaintiff in the above entitled action. That a transcript of the testimony, etc., in the above entitled action has been ordered from the official stenographer, and has not yet been furnished, and affiant verily believes that it will require at least 60 days before such transcript of the testimony and other proceedings can be furnished. That the statute requires that at least 15 days' notice shall be given of the settlement of the statement of the case, and that it will require a period of at least 60 days from this date to settle the transcript as a statement of the case herein.

Wherefore affiant asks that the time to settle the statement of the case, and to take any other steps necessary herein, and the making of any motions, be extended to and until December 20, 1920, and that meanwhile execution be stayed.

T. A. TONER.

Subscribed and sworn to before me October 19th, 1920.

FRANK KILGORE,
Notary Public, N. D.

[Endorsed:] Filed March 5, 1921.

241² On the 14th day of April, A. D. 1921, there was filed in the Supreme Court of the State of North Dakota, on appeal from the District Court of Williams County, a record on appeal in words and figures as follows, to-wit:

245 STATE OF NORTH DAKOTA,
County of Williams:

In District Court, 5th Judicial District,

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Plaintiff,
vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING BROOK STATE BANK, a Corporation; Henry Graichen, Christie Graichen, Emma L. Shartle, Verlie L. Shartle, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Elizabeth Comford, Spring Brook Trading Company, a Corporation; J. L. Kingston, Daniel Jacobson, Frank M. Craig, Natcy Craig, Charlie F. Bellet, Alice Bellet, Alva Ulrich and Hattie Ulrich, Defendants.

Notice of Appeal.

To Craven & Converse and Wm. G. Owens, attorneys for the appearing defendants:

Take notice that the above named plaintiff, Great Northern Railway Company, a corporation, appeals to the supreme court of the State of North Dakota from the judgment entered and rendered in the above entitled action in favor of the appearing defendants, Daniel Jacobson, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Vivian H. Steinke, Paul E. Steinke, Emma L. Shartle, Verlie L. Shartle, Henry Graichen, Christie Graichen, Spring Brook State Bank, a corporation, Spring Brook Trading Company, a corporation, and Frank M. Craig, and against the plaintiff, Great Northern Railway Company, a corporation, on the 7th day of October, 1920, and that this appeal is from the whole of said judgment and plaintiff demands a trial de novo and review of the entire case in the Supreme Court.

Dated Grand Forks, N. D. this 8th day of March 1921.

MURPHY & TONER,
Attorneys for Plaintiff and Appellant,
Great Northern Railway Company.

Grand Forks, N. D.

Due and personal service of the foregoing notice of appeal, and the attached specification of errors, undertaking on appeal is hereby admitted by receipt of copies of each thereof at Williston, N. D. this 16 day of March 1921.

CRAVEN & CONVERSE,
WM. G. OWENS,
Attorneys for Appearing Defendants.

[Endorsed:] Filed March 19, 1921.

Undertaking on Appeal.

Whereas the above named plaintiff, Great Northern Railway Company, a corporation, feels aggrieved by the judgment of the district court in and for the County of Williams, State of North Dakota, made entered and rendered in the above entitled action on the 7th day of October, 1920 in favor of the appearing defendants, Daniel Jacobson, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Vivian H. Steinke, Paul E. Steinke, Emma L. Schartle, Verle L. Schartle, Henry Graichen, Christie Graichen, Spring Brook State Bank a corporation, Spring Brook Trading Company, a corporation, and Frank M. Craig, and against the plaintiff, Great Northern Railway Company a corporation, and is about to appeal to the Supreme Court of the State of North Dakota from such judgment;

Now therefore, we the undersigned, Great Northern Railway Company, a corporation as principal, and National Surety Company a corporation as surety, do hereby jointly and severally undertake, promise — agree to and with the above named appearing defendants, Daniel Jacobson, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Vivian H. Steinke, Paul E. Steinke, Emma L. Schartle, Verle L. Schartle, Henry Graichen, Christie Graichen, Spring Brook State Bank a corporation, Spring Brook Trading Company a corporation, and Frank M. Craig, that the plaintiff, said Great Northern Railway Company, will pay all costs and damages that may be awarded on said appeal against it; also that if the judgment appealed from or any part thereof is affirmed, the plaintiff Great Northern Railway Company will pay the amount directed to be paid by said judgment, or the part of said judgment as to which said judgment shall be affirmed, if it be affirmed only in part; and all damages which shall be awarded against the plaintiff upon said appeal, not exceeding in all however the sum of Five Hundred Dollars.

In witness whereof we have hereunto set our hand and seal this 8 day of March 1921.

GREAT NORTHERN RAILWAY COMPANY,
By T. A. TONER,

Its Attorney.

NATIONAL SURETY COMPANY,
By CHAS. E. GARVIN,

Its Attorney in Fact.

STATE OF NORTH DAKOTA,
County of Grand Forks, ss:

On this 8 day of March 1921 before me, a notary public in and for said county and state personally appeared T. A. Toner, to me personally known to be the attorney for the Great Northern Railway Company the corporation that is described in and that executed the

foregoing undertaking as principal and he acknowledged to me that said corporation executed the same, and that he subscribed the name of Great Northern Railway Company thereto as principal, and his own name as attorney. At the same time and place also appeared before me Chas. E. Garvin, to me known to be the attorney in fact of the National Surety Company and the same person described in and whose name is subscribed to the foregoing undertaking as such attorney in fact, and he personally acknowledged to me that he subscribed the name of National Surety Company thereto as surety, and his own name as attorney in fact.

[SEAL.]

FRANK KILGORE,
Notary Public, North Dakota.

My Commission Expires: 3-25-21.

I hereby approve the foregoing undertaking and the surety thereon this 19th day of March 1921.

ROY PENMAN,
Clerk District Court.

[Endorsed:] Filed March 19, 1921.

248 (Title Same as Last Above.)

Statement of Errors of Law Complained of and Specification of Insufficiency of the Evidence to Support the Findings of Fact, the Order for Judgment, and the Conclusions of Law, and that it is Against the Law.

Now comes the Plaintiff, Great Northern Railway Company and specifies the following errors of law complained of.

1st. The Court erred in sustaining the objection of the defendant to the question appearing at folio 17, page 10 of the statement of case.

2. The Court erred in sustaining the objection of the defendants to the question appearing at folio 3 page 15, statement of the case.

3. The court erred in sustaining defendants' objection to the question appearing at folio 8 page 18 of the statement of the case.

4. The court erred in sustaining defendants' objection to question appearing at folio 19, page 20, statement of case.

5. The court erred in overruling the objection of plaintiff to the question appearing at folio 7 page 23 of the statement of the case.

6. The court erred in overruling plaintiff's objection to the question appearing at folio 15 page 23 of the statement of case.

7. The court erred in overruling plaintiff's objection to the question appearing at folio 24, page 23 of the statement of case.

8. The court erred in overruling plaintiff's objection to the question appearing at folio 7 page 24 of the statement of the case.

9. Court erred in overruling plaintiff's objection to the question appearing at folio 16 page 24 of the statement of the case.

10. The court erred in overruling plaintiff's objection to the question appearing at Folio 5, page 25 statement of case.

11. The court erred in overruling plaintiff's objection to the question appearing at folio 9, page 26, statement of case.

12. The court erred in overruling plaintiff's objection to the question appearing at folio 3, page 27, statement of case.

13. The court erred in overruling plaintiff's objection to question appearing at folio 25, page 33, statement of case.

14. The court erred in overruling plaintiff's objection to the question appearing at folio 13, page 34, statement of case.

15. The court erred in overruling plaintiff's objection to the question appearing at folio 17, page 35, statement of case.

16. The court erred in overruling plaintiff's objection to the question appearing at folio 1, page 36, folio 7, page 36, folio 13 page 36, folio 18, page 36, folio 21 page 36 statement of the case.

17. The court erred in overruling plaintiff's objection to the question appearing at folio 2, page 37, folio 9, page 37, folio 14 page 37, folio 19 page 37 and folio 25 page 37 of the statement of the case.

18. The court erred in overruling plaintiff's objection to the question appearing at folio 11, page 38, folio 16 page 38, folio 21 page 38 of the statement of the case.

19. The court erred in overruling plaintiff's objection to the following question appearing at folio 3 page 39, folio 11 page 39, folio 19 page 39, and folio 24 page 39 of the statement of the case.

20. The court erred in overruling plaintiff's objection to the question appearing at folio 3 page 40, folio 12 page 40, folio 18 page 40 and folio 25 page 40 of the statement of the case.

21. The court erred in overruling plaintiff's objections to the following questions appearing at folio 8, page 41, folio 16 page 41, folio 21 page 41 of the statement of the case.

22. The court erred in overruling plaintiff's objections to the questions appearing at folio 1 page 42, folio 8 page 42 and folio 16 page 42 of the statement of the case.

250 23. The court erred in overruling plaintiff's objections to the questions appearing at folio 1 page 43, folio 7, page 43, folio 13 page 43 folio 19 page 43 and folio 24 page 43 of the statement of the case.

24. The court erred in overruling plaintiff's objections to the following questions appearing at folio 7 page 44 folio 13 page 44 and folio 25 page 44 of the statement of the case.

25. The court erred in overruling plaintiff's objections to the following questions appearing at *folio* 10 page 45 and *folio* 20 page 45 of the statement of case.
26. The court erred in overruling plaintiff's objections to the questions appearing at *folio* 7 page 46 *folio* 18 page 46 of the statement of the case.
27. The court erred in overruling plaintiff's objection to the questions appearing at *folio* 3 page 47, *folio* 9 page 47, *folio* 15 page 47, and *folio* 21 page 47 of the statement of the case.
28. The court erred in overruling plaintiff's objection to the questions appearing at *folio* 4 page 48, *folio* 20 page 48 of the statement of the case.
29. The court erred in overruling plaintiff's objection to the questions appearing at *folio* 7 page 49, *folio* 24 page 49 of the statement of the case.
30. The court erred in overruling plaintiff's objection to the questions appearing at folios 8 page 50 and *folio* 14 page 50 of the statement of the case.
31. The court erred in overruling plaintiff's objection to the question appearing at page 51 *folio* 2, *folio* 7 page 51, *folio* 23, page 51 of the statement of the case.
32. The court erred in overruling plaintiff's objection to the question appearing at *folio* 21 page 52 of the statement of case.
33. The court erred in overruling plaintiff's objection to the question page 53, *folio* 7, statement of case.
34. The court erred in overruling plaintiff's objection to the question appearing at *folio* 17, page 53 statement of case.
35. The court erred in overruling plaintiff's objection to the question appearing at *folio* 20 page 54 of the statement of the case.
36. The court erred in overruling plaintiff's objection to the question appearing at *folio* 21 page 56 statement of the case.
37. The court erred in overruling the objection of the plaintiff on receiving in evidence the exhibits offered at *folio* 12, page 62, *folio* 16, page 62 and *folio* 20 page 62 of the statement of the case.
38. The court erred in overruling plaintiff's objection to question appearing at *folio* 13 page 64 of the statement of the case, and overruling the general objection there appearing as to all the evidence of the witness Henry Graichen, which general objection as to the testimony of the same witness was repeated and overruled at *folio* 1 page 68 of the statement of the case.
39. The court erred in overruling plaintiff's objection to the question appearing at *folio* 10 page 76 statement of the case, *folio* 17 page 76 and *folio* 24 page 76 of the statement of case.

40. The court erred in denying plaintiff's motion to strike out the answer appearing at folio 19 page 78 of the statement of the case.

41. The court erred in overruling plaintiff's objection to the question appearing at folio 18, page 82 of the statement of the case.

42. The court erred in overruling plaintiff's objection to the question appearing at folio 5, page 83 of the statement of the case and the general objection of the plaintiff there made to all the 252 evidence of the witness Daniel Jacobson, which general objection was repeated at folio 21 page 84 of the statement of the case.

43. The court erred in overruling plaintiff's objection to the question appearing at folio 6 page 94 of the statement of the case, and erred in overruling the plaintiff's general objection there appearing to all evidence of the witness F. M. Craig.

44. The court erred in overruling plaintiff's request and objections, respectively, appearing at folio 5 page 107 and folio 21 page 107 of the statement of the case.

45. The court erred in overruling plaintiff's general objection repeated at folio 3 page 110 of the statement of the case to all the evidence of the witness F. M. Craig.

46. The court erred in overruling plaintiff's objection to the question appearing at folio 9 page 112, and folio 19 page 112 of the statement of the case.

47. The court erred in overruling plaintiff's objection to the questions appearing at folio 9 page 120, folio 18 page 120 of the statement of the case.

48. The court erred in overruling plaintiff's objection to the questions appearing at folio 2 page 123, folio 8 page 123 and folio 14 page 123 of the statement of case.

49. The court erred in overruling plaintiff's objection to the question appearing at folio 8 page 126 and folio 19 page 126 of the statement of the case and in overruling the general objections there made by the plaintiff to all the evidence of the witness Jacob Widman.

50. The court erred in overruling plaintiff's objection to the question appearing at folio 8 page 139 and folio 21 page 139 of the statement of the case.

51. The court erred in overruling plaintiff's objection to the questions appearing at folio 5 page 140 of the statement of the case.

253 52. The court erred in overruling plaintiff's objection to the question appearing at folio 21 page 143 of the statement of case.

53. The court erred in overruling plaintiff's objection to the question appearing at folio 4 page 144 of the statement of case.

54. The court erred in overruling plaintiff's objection to the question appearing at folio 11 page 154 and folio 20 page 154 of the statement of case.

55. The court erred in overruling plaintiff's objection to the question appearing at folio 4 page 155, folio 9 page 155 and folio 23 page 155 statement of the case.

56. The court erred in overruling plaintiff's objection to the question appearing at folio 6, page 156, folio 13 page 156 and folio 22 page 156 of the statement of the case.

57. The court erred in overruling the plaintiff's objection to the question appearing at folio 5, page 157 of the statement of the case.

58. The court erred in overruling the plaintiff's objection to the question appearing at folio 17 page 162 of the statement of the case.

59. The court erred in overruling plaintiff's objection to the offer in evidence of the exhibit and in receiving the same appearing at folio 4 page 164 of the statement of case.

60. The court erred in overruling the plaintiff's objection to the offer of the exhibit in evidence and in receiving the same in evidence appearing at folio 17 page 164 of the statement of the case.

61. The court erred in making each and every finding of fact made, in that they are not supported or justified by the evidence, and because of such facts as were found were not found with regard to or in the light of the proof offered, but for the sole purpose of placing the court in a position to misconstrue and misapply the act of Congress of the United States of America of March 3, 1875 upon 254 which the plaintiff relied in this suit, and the application and claim under which it was fully presented, and the extent, application and construction of which was fully argued in writing, and relied on by the plaintiff before the court.

62. The court erred in making the findings of fact made and each and all of them because the act of the congress of the United States of America relating to public lands relied on by both parties were as a result of and because of such erroneous findings of fact, misapplied and misconstrued. Said findings of fact in their entirety are also objected to because even assuming the existence of the facts found the application and construction of the Act of Congress aforesaid thereto was and is erroneous and wholly unjustified.

63. The court erred in directing judgment for the defendants because of the misapplication and misconstruction of the various acts of Congress involved, and necessarily considered and construed to reach the decision and because the findings are not supported by the evidence.

64. The court erred in each and all of its conclusions of law because they are not justified by the evidence in the record, nor by the facts found, and because the court thereby on the proof in the record, as well as on the alleged facts found, misconstrued, misapplied and

rendered nugatory the act of Congress of the United States of March 3, 1875 relied upon by the plaintiff at all stages of the trial and passed upon and construed by the court in such decision, and denied the plaintiff's legal rights under said Act, to protect which this suit was brought. Further, the court misconstrued and misapplied the acts of Congress relating to public lands, relied upon by both parties, and which, as well as the act of March 3, 1875 were at all times drawn in question and at issue in this action.

65. The plaintiff further specifies, without waiving any of the general specifications or other specifications herein, against the findings, conclusions, order for judgment and the judgment, the following specific objections, to-wit: As to paragraph 2 of the findings, lines 1 to 13, there is no competent evidence, or evidence at all as to the alleged facts stated therein, except that it clearly appears that the railroad was built over the lands mentioned at some time prior to the time the transactions involved here arose. As to that part of paragraph 2 of the findings, lines 14 to 21, the alleged facts found therein are objected to for the reason that there is no competent evidence, nor evidence at all that the Secretary of the Interior on July 2, 1887 approved the map under the act of 1875 granting a right of way, and no such acts ever were performed, and no such result ever accomplished. The first claim for right of way under the act of 1875 was made July 10, 1889 by the plat exhibit B. The previous map and plat were simply for the purpose of locating the definite route of the railroad, and had nothing to do with the granting clause of the act of 1875, and did not claim any right of way or station grounds under that act or under any other act. Further, as to Lines 24, to 27 of paragraph 2 of the findings, the plaintiff complains that the court erred in finding the matters contained therein as facts for the reason that there is no competent evidence as to when the railroad was built, except that it was there in 1899; there is absolutely no evidence in the record, competent or otherwise as to when the station at Spring Brook was established, certainly none that it was there from the time the railroad was built. Exhibit B claimed a right of way only. It is exactly the same so far as route is concerned, and the outlining of possible station grounds, as the map previously filed in 1887 showing the route of the railroad, but no claim is made for station grounds, and none so far as this record shows had theretofore been formally made or granted, neither in 1887, 1899, or any other time. The map filed for the approval of the secretary of the interior on July 2, 1887 showing merely the route of the railroad and possible station grounds was not filed under the granting clause of the act of March 3, 1875 and no station grounds nor no right of way was claimed 256 therein; however, the route of the railroad so located was approved by the approval of the map at that time filed, and is shown merely by recital on exhibit B which is a collateral matter and is not competent evidence in this case for the purpose of proving any of the facts claimed, and in truth and in fact does not establish such facts as are set out in the findings.

66. The court erred in making finding of fact contained in paragraph 3, for the reason that the same is incompetent; the matters found therein are not within the issues; there is no competent evidence of the lease referred to or of the turning over of the roads or of the operation thereof. This is merely recital in the deed offered in evidence to show the transfer of title from one railroad to the other. The court should have found that on October 11, 1907 the St. Paul, Minneapolis & Manitoba Railway Co. by a good and sufficient deed conveyed warranted and assured to the Great Northern Railway Company all the right, title and interest it had acquired from the United States of America under the act of March 3, 1875 or otherwise to the right of way and station grounds at East Spring Brook, involved in this lawsuit.

67. The court erred in finding the alleged facts contained in paragraph 4 of the findings, lines 1 to 13, for the reason that there is no competent evidence in the record upon which to base the same. No competent evidence as to when the lands involved were surveyed; there is no evidence in the record whatever of the filing in the office at Minot or elsewhere, on Sept. 3, 1898, of any duplicate of a map of definite location, and no evidence of any application therein or thereon for any tract of 20 acres of land or any other tract, for station grounds or otherwise.

68. As to Lines 14 to 23 of said paragraph 4 the court erred in finding the facts found therein for the reason that there is no evidence thereof, competent or otherwise. No map or plat applying for station grounds was ever presented so far as the proof shows, or in fact; nor was a map or plat approved until July 10, 1894 by the secretary of the interior, nor does the proof show that any plat or map claiming station grounds was filed with anyone else, 257 or approved by anyone else at or near that time. These dates are all taken from exhibit B, and on Exhibit B, no 20 acres of station grounds are described or claimed at any place, and it is not a claim for station grounds at all.

69. The court erred in making the findings of fact contained in paragraph 5 of the findings, for the reason that the alleged matters therein contained are not within the issues and are incompetent. There was no claim of title urged by either the plaintiff or any of the defendants through or under Welo. There was no evidence offered, and no evidence should have been received if it had been offered of why or how he relinquished this homestead right. It might have been at the request of, and for the benefit of the railway, for all the record discloses. There is no evidence in the record that his entry was at any time valid, or that it was at any time recognized by the officers of the land office, or that he ever entered upon the land or established a residence thereon or did anything else to establish the validity of such entry.

70. The court erred in finding the alleged facts found in Paragraph 6 Lines 1 to 8 of the said paragraph, for the reason that there is no competent evidence that any station or station facilities used at

Spring Brook were removed to East Spring Brook, or that the station buildings at either place are located on the right of way proper.

71. The court further erred in making the alleged findings of fact Lines 9 to 24 of paragraph 6 of the findings, in that there is evidence that the St. Paul, Minneapolis & Manitoba Railway Company filed a plat on Jan. 12, 1900, but there is no evidence that it was ever withdrawn, and no presumption. The plaintiff is not bound by any other or later endorsement placed thereon, because it was officially filed on January 12, 1900, and that filing has never been removed, and so far as outside parties are concerned, it stands as the filing of this map.

72. The plaintiff further objects, and states that the court erred in making the alleged findings of fact contained in lines 25 to 46 of paragraph 6 of the findings, for the reason that it appears conclusively from the evidence that the railway company 258 petitioned for only one grant of 20 acres for station grounds, and in making that application, relinquished any claim that it might have to 20 acres designated in the map of definite location approved on July 2, 1887, and reproduced on the right of way map exhibit B, and shown thereon, but not claimed as station grounds in either; and neither of which maps contain any designation or what purpose the station grounds are wanted for. Such findings as the court made are not based upon any competent evidence in the record.

73. The court erred in making the findings or alleged findings contained in lines 47 to 54 of paragraph 6 of the findings, because the same are not based on any competent evidence, and the facts are not within the issues. There is no evidence one way or the other and there is no necessity one way or the other, and should have been no finding. If there was any law requiring the filing of the plats referred to, their filing would be presumed, but there was and is no law, and the finding is merely gratuitous.

74. The court erred in making the alleged findings of fact shown in lines 1 to 29, paragraph 7 of the findings. The same is not based on any competent evidence; in fact, there is no evidence whatever that the land of Pollock's homestead entry was subject to the right of way of the St. Paul Minneapolis & Manitoba Railway Company. If it were subject to the right of way, it was also subject to the station grounds, for the same reason, and with the same force. This is at best a conclusion of law, and not a fact. There is no evidence in the record of the good faith of Philander Pollock in making entry, or what he knew or did not know of the property occupied or claimed by the Railway Company. There is no evidence that he relinquished the land involved, and filed scrip thereon immediately, and as a matter of law he could file no scrip until he had relinquished. But there is no evidence, and the burden was on the defendants to connect up their chain of title, and the presumption that he filed scrip immediately after relinquishing or at any particular time thereafter, is not to be presumed, and the proof papers and affidavits filed much later on in his original entry negative such immediate locating of

scrip thereon. The patent issued to Pollock covering the land involved in 1906 upon which the scrip is supposed to have been 259 filed, does not reserve any right of way or station grounds, and there is no evidence that same was subject to the right of way, any more than the station grounds, and this is not a finding of fact, but a mere conclusion of law. Further, in the findings of fact served upon us, there is no paragraph 8.

75. The court erred in making the alleged findings of fact, in Lines 1 to 11, paragraph 9 of the findings, for the reason that there is no competent evidence to sustain the same; no competent evidence of the platting of East Spring Brook by Pollock, or the dedication of any streets and alleys, which are superimposed upon the station grounds; no evidence that Front Street, which is the only parallel street conflicting with the station grounds, has ever been used or improved as a street, or that anyone in East Spring Brook ever relied upon it as a street. There is absolutely no evidence in the record that East Spring Brook has since its organization, been incorporated, and such fact, if it is one, is immaterial and not within the issues.

76. The court erred in making the findings of fact alleged to be found by paragraph 10 of the findings, sub-paragraphs, 1, 2, 3, 4, 5, 6, 7, 8 and 9, for the reason that the same are not supported by any competent evidence and are mere conclusions of law masquerading under the guise of findings of fact.

77. The court erred in making the alleged findings of fact contained in paragraph 11 of the findings, sub-paragraphs 1, 2, 3, 4, 5, 6, 7, and 8, for the reason first, that said alleged findings of fact are not supported by any competent evidence; second, because the same or no part thereof is material; third, because in their essence the same are conclusions of law, and not findings of fact. It is clear from the record that the inhabitants of East Spring Brook did not rely on Front Street in East Spring Brook, and never used it, and it was never used to the knowledge of all persons interested, and that is the only street from the use of which any presumption could be drawn in this case, because it is the only one that is parallel to the claimed station grounds. There is no evidence of the use of the street known as Front Street, which is the only street that the use of which could possibly raise any presumption in this case.

260 That the defendants herein had no notice of the claim of the railway company until 1917 is not supported by any competent evidence in the record, and is flatly contradicted by the evidence of the defendants themselves, it appearing that the fence which was placed 200 feet from the rails on the south side was erected there prior to 1917; that commercial lots for the railway company were platted all along the station grounds prior to that time, and one of the defendants admitted that the agent of the Great Northern Railway Company long prior to 1917 stopped him when he was digging a basement for a building he was erecting upon the station grounds. Said findings throughout the sub-paragraphs mentioned are also against the weight of the evidence, and as to most of the facts con-

tained therein the existence or non-existence thereof is wholly immaterial on the question of law involved in this case.

78. The court erred in making the alleged findings of fact contained in paragraph 12 of the findings. There is no competent evidence to support the same, and particularly because in the main, such alleged findings of fact are merely conclusions of law, and because the alleged facts contained therein are not supported by the weight of the evidence. It clearly appears that commercial lots were platted upon the station grounds prior to the times mentioned in said findings, and surveys were made and fences erected, and some of the defendants warned not to build upon the property involved for the reason that it was claimed by the railway company.

79. The court erred in making findings of fact contained in paragraph 13, of the findings, for the reason that there is no competent evidence, or evidence of any kind of any conditions such as are described therein. There is no evidence whatever as to the use for right of way, and such finding is merely a conclusion of law.

80. The court erred in making its alleged findings of fact, Lines 1 to 11 paragraph 14, of the findings of fact, for the reason that there is no competent evidence upon which to base the same. The plaintiff in this case claims under Exhibit C. There is no evidence of any application for any additional station grounds in this record.

The only application for station grounds in this record, and 261 in fact, is contained in Exhibit "C" and not as set forth in paragraph 6. The last sentence in said lines 1 to 11, paragraph 14 is a mere conclusion of law. As to the second part of said paragraph, lines 12 to 21, the same is not based upon any competent evidence, and insofar as title is predicated on the deed, is a mere conclusion of law and not a finding of fact.

81. The court erred in making its conclusion of law, paragraph one, containing 11 sub-paragraphs, for the reason that the same is not supported by any competent evidence in the record, nor by the facts found, and each and all of said conclusions are contrary to law.

82. The court erred in making its conclusion of law, paragraph two, for the reason that the same is not supported by the evidence in the record, the alleged findings of fact, and are contrary to law, and erroneous.

83. The court erred in making its conclusion of law paragraph three, for the reason that the same is not supported by the evidence in the record, the alleged findings of fact, and is contrary to law, and erroneous.

84. The court erred in entering judgment and taxing and allowing costs on the findings of fact, conclusions of law, and order for judgment hereinbefore referred to, for all the reasons and upon all the grounds hereinbefore stated.

85. The court erred in making any findings of fact, conclusions of law, in ordering judgment and entering judgment in support of

and establishing the alleged title of the answering defendants, Vivian H. Steinke, Paul E. Steinke, Henry Graichen, Christie Graichen, Emma L. Schartle, Verlie L. Schartle, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, and Daniel Jacobson, for the reason that such defendants made or filed no counterclaim and prayed for no affirmative relief, and the suit as to them, even on the theory adopted by the trial court should have been merely dismissed.

86. The Court further erred in not finding and adjudging, in plaintiff's favor, that the defendants in default and not appearing, had no estate or interest in or lien or encumbrance upon the specific property that they were alleged to be interested in, and ordering and entering judgment accordingly.

262 87. The plaintiff specifies further that it demands a review of the entire case in the Supreme Court, and a trial de novo in said Supreme Court.

Dated Grand Forks, N. D., March 8th, 1921.

MURPHY & TONER,

Attorneys for Plaintiff.

[Endorsed:] Filed March 19, 1921.

263 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Fifth Judicial District,

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Plaintiff,
vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, et al., Defendants.

Judge's Certificate and Order on Appeal.

I, Geo. H. Moellring Judge of the Fifth Judicial District in and for the county of Williams State of North Dakota, do hereby certify that the above and foregoing papers, to-wit: Summons, complaint, two sheriff's returns, affidavit of publication, affidavit for publication, notice of trial, note of issue, amended separate answer of Spring Brook State Bank, Spring Brook Trading Company and Frank M. Craig, amended answer of Daniel Jacobson, amended answer of Henry Graichen, amended answer of Vivian H. Steinke, amended answer of Everett A. and Walter T. Webster, amended answer of Eli Kingston, amended answer of Emma L. Shartle, findings of fact conclusions of law and order for judgment, judgment, affidavit and statement of costs, notice of re-taxation of costs and notice of entry of judgment with admission of service on each, three orders and three affidavits extending time to settle statement of the case, statement of the case, notice for settlement of the statement of the case

and admission of service, stipulation as to settlement of the case and order settling the statement of the case, three copies of the transcript of the evidence, specifications of errors of law and of the insufficiency of the evidence, plaintiff's exhibit A, B, C, D, E, F, and G, and defendants' exhibits 1, 2, 3, 4, 5, and 6, attached to the statement of the case, notice of appeal, undertaking on appeal, and proof of service of notice and undertaking on appeal and specifications of error together with this order are contained in and constitute the judgment roll, and the whole thereof, and constitute all the files and papers in said action.

Dated this 25th day of March, 1921.

GEO. H. MOELLRING,
Judge of the District Court.

264 STATE OF NORTH DAKOTA,
County of Williams, ss:

In District Court, Fifth Judicial District.

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Plaintiff,
vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, et al., Defendants.

Clerk's Certificate on Appeal.

I, Roy Penman Clerk of the District Court in and for the County of Williams State of North Dakota in the 5th., Judicial District, do hereby certify that the above and foregoing papers are the original notice of appeal, with proof of service thereof, and the undertaking on appeal with like service, the original specifications of error with like proof of service, and the original judgment roll with the order and certificate of the judge thereto appended, in the above entitled action wherein Great Northern Railway Company, a corporation is plaintiff and Vivian H. Steinke, Paul E. Steinke et al. are defendants, as the same now remains of record in this Court, and the same are transmitted to the Supreme Court pursuant to said appeal.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at Williston, N. D. this 11 day of April 1921.

[SEAL.]

ROY PENMAN,
Clerk of the District Court.

265

File No. 4112.

STATE OF NORTH DAKOTA, ss:

In the Supreme Court,

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Plaintiff and
Appellant,

vs.

VIVIAN H. STEINKE et al., Defendants, and VIVIAN H. STEINKE
et al., Defendant- and Respondents.

Appeal from the District Court of Williams County.

This action coming on to be heard at the May A. D. 1921 term
of this Court at the Supreme Court rooms in the City of Bismarck,
State of North Dakota:

Present: James E. Robinson, Chief Justice; A. M. Christianson,
Luther E. Birdzell, Richard H. Grace and H. A. Bronson, Associate
Justices, and the appeal herein having been submitted by
Murphy & Toner for the Appellant and by Craven & Converse and
Wm. G. Owens for Respondent and the court having advised thereon
it is now considered, ordered and adjudged that the judgment of
the said District Court within and for said Williams County ap-
pealed from herein, be and the same is hereby affirmed.

And it is further ordered, That this cause be and it is hereby re-
manded to the District Court for further proceedings according to
law, and the order of this court.

And it is further considered and adjudged, That Respondents
have and recover of the Appellant costs and disbursements on this
appeal expended, to be taxed and allowed in the District Court.

Dated 28th ——, 1921.

By the Court,

J. E. ROBINSON,
Chief Justice.

Attest:

J. H. NEWTON,
Clerk.

[Endorsed:] File No. 4112. In the Supreme Court, State of
North Dakota. Great Northern vs. Steinke et al. Order for Judg-
ment. Filed in Court this 28th day of May, 1921. J. H. Newton,
Clerk.

266 Filed May 28, 1921.

In Supreme Court.

STATE OF NORTH DAKOTA:

GREAT NORTHERN RAILWAY COMPANY, a Corporation,
Plaintiff and Appellant,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING BROOK STATE
Bank, a Corporation; Henry Graichen, Christie Graichen, Emma
L. Schartle, Verlie Schartle, Everett A. Webster, Martha Webster,
Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston,
Elizabeth Comford, Spring Brook Trading Company, a Cor-
poration; J. L. Kingston, Daniel Jacobson, Frank M. Craig, Nancy
Craig, Charlie F. Bellet, Alice Bellet, Alva Ulrich, and Hattie Ul-
rich, Defendants, and Vivian H. Steinke, Paul E. Steinke, Spring
Brook State Bank, a Corporation; Henry Graichen, Christie
Graichen, Emma L. Schartle, Verlie L. Schartle, Everett A.
Webster, Martha Webster, Walter T. Webster, Addie M. Web-
ster, Eli Kingston, Edna Kingston, Spring Brook Trading Com-
pany, a Corporation; Daniel Jacobson, and Frank M. Craig, De-
fendants and Respondents.

The plaintiff railway company brought action to determine ad-
verse claims to a strip of land which it claims to have selected and
appropriated as station grounds under the provisions of the Act of
Congress of March 3, 1875, Ch. 152 Stat. L. 482 (U. S. Comp. Stat.
1901, p. 1568). The defendants occupied and claimed title to cer-
tain portions of said strip under and by virtue of deeds received
through one Pollock who had obtained a patent from the United
States which among other lands purported to convey to said Pol-
lock the whole strip claimed by the railway company in this action.
It is held, that the defendants are the owners of the respective par-
cels to which they assert title.

(Syllabus by the Court.)

From a judgment of the district court of Williams County, Fisk,
J., plaintiff appeals.

Affirmed.

Opinion of the Court, by Christianson, J.

Murphy & Toner, Grand Forks, for appellant.

Craven & Converse, and Wm. G. Owens, all of Williston, N. D.,
for respondents.

GREAT NORTHERN RAILWAY CO.

vs.

STEINKE ET AL.

CHRISTIANSON, J.:

This is an action to determine adverse claims to a certain strip of land adjoining the right of way of the plaintiff railway company in the town of East Spring Brook in Williams County in this state. The plaintiff railway company, as successor in title to the St. Paul, Minneapolis & Manitoba Railway Company, claims that the property in question is a part of the station grounds granted to its predecessor under the act of Congress of March 3, 1875 (18 Stat. at L. 482, Chap. 152; U. S. Comp. St. 1901, p. 1568). And it is averred in the complaint that the several defendants are owners of certain lots in East Spring Brook which lots "as platted encroach upon" a part of the strip of land to which plaintiff seeks to have title quieted in itself. The strip of land described in the complaint is located wholly within the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Section 18, Twp. 155, R. 99. The defendants answered, denying the allegations of the complaint, and alleging a fee simple title to the several lots through patent issued by the United States to one Philander Pollock under whom they claim title. They further averred that they had been possessed of the premises under color of title and had paid taxes thereon for a period of more than ten years and hence, had become vested with title by virtue of Section 5471, C. L. 1913; also that the plaintiff railway company has been guilty of such laches as to bar its right to maintain this action. The judgment in the trial court was in favor of the defendants and the plaintiff has appealed and demanded a trial anew in this court. The conflicting claims arose as follows:—The St. Paul, Minneapolis & Manitoba Railway Company was duly qualified under the act of Congress of March 3, 1875, to acquire a right of way and station grounds, in 1887 or prior thereto said railway company located and commenced the construction of a line of railway over the lands in controversy here, completing such construction in May, 1887. At that time the lands were unsurveyed. The Secretary of the Interior had

268 approved the application of the railway company for the construction of such line of railway across the public domain, but a plat giving the definite location thereof was not filed in the local land office at Minot, North Dakota until September 3, 1898. In the meantime the lands had been surveyed and on the last mentioned date said railway company filed in said local land office a plat showing the railway as constructed, and an additional twenty acre tract, adjoining the right of way, located in Sections 4 and 5, Township 155 North, of Range 99 West, said tract being designated on said plat as "Spring Brook." Said plat was thereafter presented to the then Secretary of the Interior and by him approved on July 10, 1899. For some years after the railroad was constructed and put into operation it maintained the station of

Spring Brook at the place so designated in Sections 4 and 5. At a later time—(the exact time does not definitely appear in the evidence)—the location of said station was changed to its present location in the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Section 18 of said township and range, that is to say, to a point on the line of railway adjacent to the strip of land involved in this controversy. On April 24, 1900, one John Welo duly made a homestead entry covering, among others, the said N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Section 18, Twp. 155, R. 99, which homestead entry remained in effect until May 13, 1901, when it was relinquished by the entryman. On January 12, 1900, the said railway company filed in the local land office at Minot, North Dakota, its application for and the plat of an additional twenty acre tract in the N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Section 18, Twp. 155 N., Range 99 W., which tract includes the lots or parcels of land in controversy here. But it seems that the railway company later withdrew the application and plat, for it bears this endorsement:

"U. S. Land Office, Minot, N. D.

Received and refiled July 18, 1900, at 9 A. M. The land embraced in this selection is all vacant except E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, Section 18, Twp. 155, Rg. 99.

THOMAS E. OLSGARD,

Register.

ABNER L. HANSOM,

Receiver."

On October 18, 1900, the then Secretary of the Interior 269 made and signed the following endorsement thereon:—"Approved subject to all valid existing rights." No evidence was offered explanatory of the withdrawal of the plat and application by the railway company. Nor is there any showing that the plat as approved was at any time filed with the local land office or that any notation thereof or of the lands claimed therein was ever made upon the records of the local land office. On August 19, 1902, one Philander Pollock, filed homestead entry upon a quarter section of land, including the said N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$, Section 18, within which the lands in controversy here are located. On June 1, 1903, said Pollock relinquished his entry as to said forty acre tract, and at the same time located scrip on said tract. The scrip was allowed, and on October 31, 1905, a receiver's receipt for said forty acre tract was duly issued by the officers of the local land office at Minot, North Dakota, and shortly thereafter recorded in the office of the register of deeds of said Williams County. On February 28, 1906, the United States issued to said Pollock a patent for said forty acre tract, which said patent was shortly thereafter recorded in the office of the Register of Deeds of said Williams County. No notation was made on the receiver's receipt or reservation or exception made in the Patent as to the alleged claim of the plaintiff.

Both the receiver's receipt and patent were in the ordinary form, and contained nothing to indicate that either the plaintiff or anyone else had or claimed any portion thereof. Nothing was recorded in the office of the Register of Deeds tending to show that plaintiff claimed any portion of the premises for station grounds. Thereafter the defendants, in good faith and without any notice of the alleged claim of the plaintiff, purchased the respective lots now claimed by them and paid to their respective grantors full value for the tracts conveyed. Each of them received conveyances fair on their face from the then record owners of the title purported to be conveyed by the United States to Pollock by virtue of said patent. Since acquiring such titles the respective defendants or their grantors have been in open and exclusive possession of the respective lots claimed by them, and have caused the same to be improved and valuable structures to be constructed thereon. No claim was asserted by the plaintiff until in May, 1917.

270 The provisions of the Act of Congress of March 3, 1875, which are pertinent to the questions presented in this case are:—

"Section 1. The right of way through the public lands of the United States is hereby granted to any railway company duly organized under the laws of any state or territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proof of its organization under the same, to the extent of 100 feet on each side of the central line of said road; also the right to take from the public lands adjacent to the line of said road, material, earth, stone and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station buildings, depots, machine shops, side tracks, turnouts, and water stations not to exceed in amount 20 acres for each station to the extent of one station for each ten miles of its road. * * *

Section 4. Any railroad company desiring to secure the benefits of this act, shall, within twelve months after the location of any section of 20 miles of its road, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such a right of way shall pass shall be disposed of subject to such right of way; provided, that if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road."

Prior to the initiation of any right here involved, the Land Department put in force certain regulations to be followed by rail-

road companies desiring to secure the benefits of a grant in advance of actual construction, as provided by the 4th section of the act. One of these required that upon the location of any section, not exceeding 20 miles in length, the company should file with the register of the land district in which the land lay "a map for the approval of the Secretary of the Interior, showing the termini of such portion and its route over the public lands," etc. Another of these departmental regulations provided that "if the company desires to avail itself of the provisions of the law which grants the use of ground adjacent to the right of way for station buildings * * * it must file for approval, in each separate instance, a plat showing, in connection with the public surveys, the surveyed limits and area of the ground desired." These regulations require that "a copy" of the approved map of "definite location," and of the

271 "approved plat of ground selected by a company, under the act in question, for station purposes," shall be transmitted to the register of the land office where the land lies. Upon the receipt of the map of alignment, the land office is required "to mark upon the township plats the line of the route of the road as laid down on the map," and to note in pencil on the tract books opposite the tract of public land cut by said lines of railroad, "that the same is disposed of subject to the right of way," etc., and to write upon the face of any certificate disposing of said lands, after the filing of such approved map of location, "that it is allowed subject to the right of way." A like duty is put upon the register when an approved station ground plat is received. (Stalker vs. Oregon S. L. R. Co., 225 U. S. 142, 147, 56 L. Ed. 1027, 1030.)

Did the railway company acquire title to the tracts in controversy under the above quoted statutory provisions and the rules and regulations of the land department incident thereto? The trial court answered this question in the negative and we are constrained to agree with this view. Whatever title the plaintiff has rests upon the filing and approval of the plat. For, clearly there was no such act on the part of the railway company in dealing with or utilizing the premises as would constitute an appropriation by the railway company of any of the parcels in controversy here for stations grounds,—assuming that station grounds may be secured by the actual use thereof by the railway company for such purpose (Stalker v. Oregon S. L. R. Co., 225 U. S. 142, 147). It will be noted that plat was not filed within twelve months after the location and construction of the railroad, nor was it filed within twelve months after the lands had been surveyed by the United States. Whether land may be selected under the provisions of the act after the lapse of such time, we find it unnecessary to decide. For, assuming that lands may be selected after the period of time fixed in the statute has expired, we do not believe that title was vested in the railroad company to the tracts in question here. The railway company acquired no rights except such as the Secretary of the Interior by his approval purported to grant. (Stalker v. Oregon S. L. R. Co. *supra*.) And it will be noted that when the plat was presented to the officers of the

local land office on July 18, 1900, they made an endorsement
272 thereon specifically showing that the 40 acre tract, the title
to which lies at the foundation of this law suit, was not vacant.
In other words, the endorsement of the officers of the local land
office was in legal effect that such tract was no longer a part of the
public domain. 32 Cyc. 948. This endorsement was on the plat
presented to the Secretary of the Interior. He was specifically informed
that the tract in controversy here was not subject to disposal
by him under the provisions of the act, and the language in
which his approval is couched shows that he was fully aware that he
could not grant the application of the railway company as made, and
he did not purport to do so. It is our judgment, therefore, that the
Secretary of the Interior intended to and did approve the application
only in so far as the lands claimed by the railroad company were
(according to the information then before the Secretary of the Interior)
subject to disposal by him under the provisions of the act,
and that he had no intention to and did not approve of the application
for station grounds on the tracts of land which the endorsement
of the officers of the local land office said were not vacant. Hence,
the patent issued to Pollock vested a good title in him and those
claiming under him.

In our opinion there is also another reason why the plaintiff can
not prevail in this case. Not only was the land in controversy cov-
ered by a valid and existing homestead entry at the time the ap-
plication of the railway company was finally presented to and filed
in the local land office, as well as at the time it was approved by the
Secretary of the Interior, but subsequently the land department ac-
cepted scrip tendered by Philander Pollock and after the scrip had
been approved by the commissioner of the general land office a re-
ceiver's receipt was issued and duly recorded which contained no no-
tice whatever of the fact that any portion of the land was claimed by
the railroad company for station grounds. Subsequently patent was
issued, purporting to convey to said Pollock the entire 40 acre tract.
There is no room for doubt, under the evidence in this case, but that
Pollock accepted the title which he received from the government
in the best of faith, believing that the entire tract had been conveyed

273 to him subject only to the right of way proper of the railroad
company, and that he had not the slightest idea that the rail-
way company claimed any additional portion as station
grounds. The undisputed evidence shows that the defendants in
this case purchased the premises in good faith relying upon the
title conveyed by the United States government to said Pollock;
that in reliance upon such title they paid the grantor full value and
caused valuable improvements to be placed on the premises. All
this without any assertion or claim of title by the railway company.
In these circumstances we believe that the defendants became and
are entitled to protection as bona fide purchasers. The doctrine that
— bona fide purchaser will be protected even in the absence of
statute has frequently been recognized by the United States Supreme
Court, even in the absence of statute. In construing the adjustment
act, the Supreme Court of the United States said:

"There was no need of any legislation to protect a 'bona fide purchaser'. This had been settled by repeated decisions of this court, *United States v. Burlington, etc. R. Co.* 98 U. S. 334, 342, 25 L. Ed. 198; *Colorado Coal, etc. Co. v. United States*, 123 U. S. 307, 313, 31 L. Ed. 182, reaffirmed in *United States v. Cal. etc. Land Co.*, 148 U. S. 31, 41 37 L. Ed. 354. For in each of those cases it was decided that, although a patent was fraudulently and wrongfully obtained from the government, if the land conveyed was within the jurisdiction of the land department, the title of a bona fide purchaser from the patentee could not be disturbed by the government, *United States v. Winona, etc. R. Co.* 165 U. S. 463, 478-479, 41 L. Ed. 789, 796."

It follows from what has been said that the judgment appealed from must be affirmed. It is so ordered.

A. M. CHRISTIANSON,
H. A. BRONSON,
J. E. ROBINSON,
L. E. BIRDZELL.

I concur in the result.

RICHARD H. GRAU.

M. L. 411,124. "F." M. N.

4—207.

Department of the Interior,
General Land Office,
Washington, D. C.

June 16, 1919.

I hereby certify that the annexed copy of a letter is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.]

D. K. PARROTT,
*Acting Assistant Commissioner of the
General Land Office.*

275 Z. B. S.
To —.

Department of the Interior.

Washington, 6 April, 1880.

The Commissioner of the General Land Office.

SIR:

I return herewith, for your files, the "due proofs" filed by the St. Paul, Minneapolis, and Manitoba Railway Company in Dakota

Territory, under the right of way act of 3d March 1875. The papers are now in proper form and are satisfactory, and you will so inform the Company.

Very respectfully,

C. SCHURZ,
Secretary.

Ex. "D."

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EXHIBIT E.

St. Paul, Minneapolis and Manitoba Railway Company
to

Great Northern Railway Company.

Deed.

Indendure, Made this eleventh day of October, 1907, between The St. Paul, Minneapolis and Manitoba Railway Company, a corporation organized and existing under and by virtue of the laws of the state of Minnesota, party of the first part, and the Great Northern Railway Company, a corporation organized and existing under and by virtue of the laws of said state, party of the second part, Witnesseth:

The party of the first part is the owner, subject to the incumbrances hereinafter named, of the lines of railway described as follows, to wit:

1. A line of railway beginning at a point in St. Paul, in the county of Ramsey and State of Minnesota, and extending thence northwesterly, by way of Anoka, St. Cloud, Barnesville and Crookston, to a point on the international boundary line between the United States and the Dominion of Canada near St. Vincent, in the county of Kittson, in said state.

2. A line of railway beginning at a connection with said line last above described at Minneapolis Junction, in Minneapolis, in the county of Hennepin and state of Minnesota, and extending thence northwesterly by way of Willmar and Breckenridge, in the state of Minnesota, and Wahpeton, Casselton, Riplon, Portland and Larimore, in the state of North Dakota, to Hannah, in the county of Cavalier, in said state of North Dakota.

3. A line of railway beginning at a connection with said last above described line at Clearwater Junction, in the city of Minneapolis, in said county of Hennepin, and extending thence northwesterly to a connection with said line first above described at St. Cloud, in the county of Stearns, in the state of Minnesota.

4. A line of railway beginning at a connection with said line of railway second above described, west of Wayzata, in said county of Hennepin, and extending thence westerly to Hutchinson, in the county of McLeod, in the state of Minnesota.

5. A line of railway beginning at a connection with said line first above described, at East St. Cloud, in the county of Benton, State of Minnesota, and extending thence northeasterly to a connection with the railway heretofore owned by the Eastern Railway Company of Minnesota, at Hinckley, in the county of Pine, in the state of Minnesota.

6. A line of railway beginning at a connection with said line of railway first above described, at Elk River, in the county of Sherbourne, in the state of Minnesota, and extending thence northerly to a connection with said line last above described, at Milaca, in the county of Mille Laes, in said state.

7. A line of railway beginning at a connection with said line of railway first above described, at St. Cloud, Minnesota, and extending thence southwesterly to a connection with said line of railway second above described, at Willmar, in the county of Kandiyohi, in the state of Minnesota.

8. A line of railway beginning at a connection with said line first above described at Sauk Center, in the County of Stearns, and extending thence northerly to Park Rapids, in the county of Hubbard, in said state of Minnesota.

9. A line of railway beginning at a connection with said line first hereinabove described, at Fergus Falls, in the county of Ottertail, in the state of Minnesota, and extending thence northerly to Pelican Rapids, in said Ottertail county, in said state of Minnesota.

10. A line of railway beginning at a connection with said line first hereinabove described at Redland, in the county of Polk, in the state of Minnesota, and extending thence easterly to a connection with the railway heretofore owned by the Eastern Railway Company of Minnesota, at Fosston, in said county of Polk.

11. A line of railway beginning at a connection with said line first hereinabove described near Crookston in the county of Polk in the state of Minnesota, and extending thence westerly and 278 southwesterly by way of East Grand Forks, in the state of Minnesota, Grand Forks, Devils Lake, Minot and Williston, in the state of North Dakota, and Havre, in the state of Montana, to a connection with the railway heretofore owned by the Montana Central Railway Company on the south side of the Sun River in Great Falls, in the county of Cascade, and state of Montana.

12. A line of railway beginning at a connection with said line first hereinabove described north of Barnesville, in the county of Clay, in the state of Minnesota, and extending thence northerly and westerly by way of Moorhead, in the state of Minnesota, and Fargo and Hillsboro, in the state of North Dakota, to a connection with said line last hereinabove described, at Grand Forks, Junction, in the county of Grand Forks, State of North Dakota.

13. A line of railway beginning at a connection with said line second above described north of Wahpeton, in the county of Rich-

land, in the state of North Dakota, and extending thence northerly through the states of North Dakota and Minnesota to a connection with said line last hereinabove described, at Moorhead, in the county of Clay, in the state of Minnesota.

14. A line of railway beginning at a connection with the line last hereinabove described, at said Moorhead, and extending northerly to a connection with said line first hereinabove described south of Redland, in the county of Polk, in the state of Minnesota.

15. A line of railway beginning at a connection with the railway of the Northern Pacific Railway Company near Red Lake Falls, in the county of Red Lake, state of Minnesota, and extending thence northerly to Thief River Falls, in said Red Lake county.

16. A line of railway beginning at a connection with said line last above described at St. Hilaire, in said Red Lake county, and extending thence southerwesterly to Ives, in said Red Lake county.

17. A line of railway beginning at a connection with said line second above described north of Benson, in the county of Swift, in the state of Minnesota, and extending thence southwesterly through the states of Minnesota, and South Dakota, to Watertown, 279 in the county of Codington, in the state of South Dakota.

18. A line of railway beginning at a connection with said line second above described at Morris, in the county of Stevens, in the state of Minnesota, and extending thence westerly to Browns Valley, in the county of Traverse, in said state of Minnesota.

19. A line of railway beginning at a connection with said line first above described north of Evansville, in the county of Douglas, in the state of Minnesota, and extending thence westerly to a connection with said line second above described, near Tintah, in said county of Traverse, in the state of Minnesota.

20. A line of railway beginning at a connection with said line second above described, near Yarmouth, in the county of Wilkin, in the state of Minnesota, and extending thence westerly through the states of Minnesota and North Dakota to Ellendale, in the county of Dickey, in said state of North Dakota.

21. A line of railway beginning at a connection with said line last above described, at Rutland, in the county of Sargent, state of North Dakota, and extending thence southwesterly through the states of North Dakota and South Dakota, to Aberdeen, in the county of Brown in the State of South Dakota.

22. A line of railway beginning at a connection with said line second above described, at Casselton, in the county of Cass, in the State of North Dakota, and extending thence northerly by way of Mayville, to Portland Junction, in the county of Traill, in the state of North Dakota.

23. A line of railway beginning at a connection with said line second above described, at Ripon, in said County of Cass and state of North Dakota, and extending thence northwesterly to a connection with the line of railway heretofore owned by the Dakota and Great Northern Railway Company, at Ameta, in the county of Nelson, state of North Dakota.

24. A line of railway beginning at a connection with said line second above described, at Addison, in the county of Cass, state of North Dakota, and extending thence westerly to Chaffee, in said county of Cass.

280 25. A line of railway beginning at a connection with said line 12th, above described at Grand Forks, in the county of Grand Forks, state of North Dakota, and extending thence northwesterly to a point on the international boundary line between the United States and the Dominion of Canada, near Neche, in the county of Pembina, in said state of North Dakota.

26. A line of railway beginning at a connection with said line last above described at Grafton, in the county of Walsh, in the state of North Dakota, and extending thence northerly and northwesterly to Walhalla in the county of Pembina, in the state of North Dakota.

27. A line of railway beginning at a connection with said line 12th, above described, at Church's Ferry, in the county of Ramsey, in the state of North Dakota, and extending thence northwesterly to a point north of St. Johns, in the county of Rolette, in the state of North Dakota.

28. A line of railway beginning at a connection with said line 12th above described at Rugby, in the county of Pierce, in the state of North Dakota, and extending thence northwesterly to a point north of Bottineau, in the county of Bottineau, in said state of North Dakota.

29. A line of railway beginning at a connection with said line 12th, above described, west of Havre, in the county of Chouteau, in the state of Montana, and extending thence westerly by way of Chester and Cut Bank, in the State of Montana, and Bonners Ferry and Sand Point, in the state of Idaho, and Spokane, Wenatchee, Wellington and Snohomish, in the state of Washington, to a connection with the railway heretofore owned by the Seattle and Montana Railroad Company at Everett, in the county of Snohomish, in the state of Washington.

30. A line of railway beginning at a connection with said line last above described, at Columbia Falls, in the county of Flathead, in the state of Montana, and extending thence southwesterly and westerly to Lakeview, in said county of Flathead.

31. Also sundry spur and branch lines of railway connecting with the railways hereinabove described and operated in connection therewith and as a part thereof.

281 The party of the first part is also the owner, subject to said incumbrances, of a large number of passenger cars, freight cars, express and mail cars, and other freight and passenger equipment, and of a large number of locomotives and other rolling stock, machine shops and other shops used in connection with the railways above described, and of the tools, furnishings and appliances connected therewith, and of sundry office buildings and other buildings and structures, and the real estate upon which the same are situated.

The party of the first part is also the owner of various lands granted to it by the United States of America and by the state of Minnesota to aid the construction of the railroads hereinabove described; and of sundry contracts for the sale of said lands entered into with divers persons and corporations, upon which contracts sums of money are due and payable.

The party of the first part is also the owner of certain stocks and securities and other personal property, which said stocks and securities are set forth and described in a certain indenture hereinafter referred to dated February 1, 1890, executed by the party of the first part to the party of the second part.

The party of the first part is also a party to and the owner of certain rights and subject to certain obligations under divers contracts entered into with other railway companies, by which the party of the first part has granted to such other companies running rights over various parts of the railways hereinabove described; and is also a party to contracts with telegraph companies relating to telegraph service along and upon said lines of railway.

The party of the first part has heretofore executed the following mortgages:

1. A mortgage dated the first day of October, 1879, to John S. Kennedy and Samuel Thorne, of New York, as trustees, to secure an issue of bonds bearing interest at the rate of six per centum per annum, of which bonds there have been issued and are now outstanding \$6,250,000.00, par value; which mortgage covers a part of the railways and properties hereinabove described.

282 2. A mortgage dated November 1, 1880, to the Central Trust Company of New York, as trustee, known as the Dakota Extension Mortgage, to secure an issue of bonds due November 1, 1910, bearing interest at the rate of six per centum per annum, of which bonds there have been issued and are now outstanding \$4,822,000.00, par value; which said mortgage covers those parts of the lines of railway and properties hereinabove described which are situated in the state of North Dakota.

3. A mortgage dated May 1, 1883, to the Central Trust Company of New York as trustee, to secure an issue of bonds known as the Consolidated Mortgage bonds, due July 1st, 1933, of which bonds there have been issued and are now outstanding \$13,344,000.00, par value, bearing interest at the rate of six per centum, per annum; and \$19,250,000.00, par value, bearing interest at the rate of four and

one-half per centum per annum which said mortgage covers parts of the railways and properties hereinabove described.

4. A mortgage dated June 1, 1887, to the Central Trust Company of New York, as trustee, known as the Montana Extension Mortgage, to secure an issue of bonds due June 1, 1937, bearing interest at the rate of four per centum per annum; of which bonds \$10,185,000 par value, bearing interest at said rate of four per centum per annum have been issued and are now outstanding; which said mortgage covers parts of the railways and properties hereinabove described.

5. A mortgage dated July 1st, 1890, to the Central Trust Company of New York, as trustee, known as the Pacific Extension Mortgage, to secure an issue of bonds due July 1, 1940, bearing interest at the rate of four per centum per annum, of which bonds 6,000,000 pounds Sterling, have been issued and are now outstanding; which said mortgage covers parts of the railways and properties hereinabove described.

6. The party of the first part has also issued and sold improvement bonds bearing interest at the rate of four per centum per annum, of which bonds \$11,910,000 par value are now outstanding.

The party of the first part has heretofore, for a valuable consideration guaranteed the payment of the principal and interest of bonds issued by other corporations and now outstanding as follows:

283 1. \$4,700,000, par value, of First Division First Mortgage five per cent gold bonds issued by the Eastern Railway Company of Minnesota, dated April 2, 1888, and payable April 1, 1908, secured by a mortgage dated January 21, 1888, executed by the Eastern Railway Company of Minnesota to the Central Trust Company of New York, as trustee.

2. \$5,000,000, par value, of Northern Division First Mortgage four per cent gold bonds, issued by the said Eastern Railway Company of Minnesota, dated April 1, 1898, payable April 1, 1948, secured by a mortgage dated April 1, 1898, executed by said Eastern Railway Company of Minnesota to the Mercantile Trust Company of New York, as trustee.

3. \$2,150,000, par value, of First Mortgage six per cent gold bonds, and \$650,000, par value, of First Mortgage five per cent gold bonds, issued by the Minneapolis Union Railway Company, dated March 1, 1882, payable July 1, 1922; secured by mortgage dated March 1, 1882, executed by said Minneapolis Union Railway Company to the Central Trust Company of New York, as trustee.

4. \$6,000,000, par value, of First Mortgage six per cent gold bonds, and \$4,000,000, par value, of First Mortgage five per cent gold bonds, issued by the Montana Central Railway Company dated July 1, 1887, payable July 1, 1937; secured by a mortgage dated July 1, 1887, executed by said Montana Central Railway Company to the Central Trust Company of New York, as trustee.

The party of the first part heretofore, by an indenture dated February 1, 1890, leased and demised upon the terms and conditions in said indenture stated, the railways and properties hereinabove described, unto the party of the second part for a term of nine hundred and ninety-nine years from and after said first day of February, 1890, and the party of the second part has since said first day of February 1890, been in possession and still is in possession of said railway and properties under and pursuant to said lease.

Now therefore, The party of the first part, in consideration of the sum of thirty-five million dollars (\$35,000,000.00) to it in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and does hereby grant, bargain, sell and convey unto the party of the second part all and singular the said railways and lines of railway hereinabove described, together with all the rights, privileges, immunities and franchises pertaining thereto, and all branches and spur tracks connected therewith, and all right of way, yard grounds and yards station grounds and stations, grounds acquired and held for use in connection with the said railways or any part thereof, whether acquired or held in the name

of the party of the first part or in the name of some other person or corporation for its use; all sidetracks, spur tracks, machine shops and repair shops and the machinery, tools and implements, therein or used in connection therewith; all round-houses, turntables, water supply plant and equipment, warehouses, depots, and the furniture and fixtures thereof; all fuel sheds and all tools, implements and tackle designed for use in connection therewith; all stationary and portable engines, locomotive engines, passenger cars, baggage cars, mail and express cars, business cars, and all other cars of every description whatsoever designed for use in passenger trains; all box cars, stock cars, flat cars, coal cars, and all cars of every other description whatsoever designed for use in freight traffic; all snow plows, steam shovels, wrecking cars, boarding cars, dump cars, hand cars, push cars, freight cars, and all cars of every other description; all track tools, engineering tools and instruments owned by the party of the first part; all office buildings, warehouses, store buildings, and all other buildings and structures of every name and nature now owned by the party of the first part; all stocks and securities of every name and nature owned by the party of the first part at the date hereof; all the right, title and interest of the party of the first part in and to any and all contracts with any other persons or corporations relating to running rights, telegraph service or any other matters in connection with said railways or in connection with the use and occupation of any of the property of the party of the first part; all lands granted to the party of the first part by the United States or by the State of Minnesota or by any other municipality or government to aid in the construction of the said railways hereinabove described; together with all the contracts for the sale thereof and the moneys accrued and to accrue thereunder; and all other property, tools, implements, machinery, equipment fixtures and appurtenances owned by the party of the first part; and all prop-

erty real, personal and mixed, of every name and nature and where-
soever situated, at the date hereof owned by the party of the first part,
including all revenues and income accruing to the party of the first
part from and after November 1, 1907.

285 To have and to hold, from and after the first day of November, 1907 all and singular the railways and properties hereby conveyed, unto the party of the second part, its successors and assigns, forever. Subject, nevertheless, to each and every of the mortgages hereinbefore recited and described. Subject also, to all obligations imposed upon the party of the first part under and by virtue of any contract entered into between it and any other person or corporation concerning the use, occupation or enjoyment of the said railways and properties or any part thereof, or any interest therein.

The party of the second part, in consideration of the conveyance hereby made hereby assumes and agrees to pay each and every of the bonds heretofore issued by the party of the first part and now outstanding under said mortgages hereinabove referred to, and to keep and perform each and every of the covenants and conditions in and by said mortgages hereinbefore referred to, and each of them, stipulated to be kept and performed by the party of the first part; and assumes and agrees to pay any and all current indebtedness of the party of the first part existing at the date hereof; and assumes and agrees to perform all and every of the contracts heretofore entered into by the party of the first part with any persons or corporations relating to the use, occupation or enjoyment of the said railways and properties or any part thereof, or any interest therein.

The party of the second part, in consideration of the conveyance hereby made hereby assumes and agrees to pay each and every of the bonds heretofore issued by the party of the first part and now outstanding under said mortgages hereinabove referred to, and to keep and perform each and every of the covenants and conditions in and by said mortgages hereinbefore referred to, and each of them, stipulated to be kept and performed by the party of the first part; and assumes and agrees to pay any and all current indebtedness of the party of the first part existing at the date hereof; and assumes and agrees to perform all and every of the contracts heretofore entered into by the party of the first part with any persons or corporations relating to the use, occupation or enjoyment of any part of said properties or of any right therein.

286 The party of the second part, for the consideration above named, hereby assumes all the obligations imposed upon the party of the first part by and all liabilities that may grow out of the several guaranties by the party of the first part of the payment of the principal and interest of said bonds heretofore issued by the Eastern Railway Company of Minnesota, the Minneapolis Union Railway Company or the Montana Central Railway Company, or by or out of the guaranty by the party of the first part of any issue of bonds now outstanding.

The party of the second part shall indemnify and save harmless the party of the first part from any and all loss, costs or expenses

on account of any obligation or liability of the party of the first part herein assumed and agreed to be performed or discharged by the party of the second part.

Each of the parties hereto, in consideration of the premises, hereby releases the other, from and after November 1, 1907, from each and every of the covenants and stipulations in and by said indenture of lease dated February 1, 1890, assumed and stipulated to be kept and performed by the parties hereto, respectively.

The party of the first part shall, from time to time and at any and all times hereafter and as often as thereto requested by the party of the second part execute, acknowledge and deliver all such further deeds, conveyances and assurances for the better assuring and conveying unto the party of the second part of the railways and properties hereby conveyed or agreed or intended or contemplated to be hereby conveyed to the party of the second part, its successors, and assigns, as the party of the second part shall deem necessary or desired.

In witness whereof: The parties hereto have caused this instrument to be executed by their respective proper officers, therunto duly authorized, and their respective corporate seals to be hereunto affixed, the day and year first above written.

ST. PAUL, MINNEAPOLIS AND MANITOBA
RAILWAY COMPANY,
By ROBT. L. FARRINGTON,
Second Vice-President.

Attest:

[Corporate Seal.]

287 E. SAWYER,
Secretary.

GREAT NORTHERN RAILWAY COMPANY,
By LOUIS W. HILL,
President.

Attest:

[Corporate Seal.]

E. SAWYER,
Assistant Secretary.

Executed in the presence of:

ALBAN BODINE,
EARL W. McELROY,

STATE OF MINNESOTA,

County of Ramsey, ss:

On this 11th day of October, 1907, before me personally appeared R. L. Farrington, and Edward Sawyer, to me known, who being by me first duly sworn, each for himself did depose and say: That they are the Second Vice President and Secretary, respectively, of the St. Paul, Minneapolis, and Manitoba Railway Company, the corpora-

tion described in and which executed the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors. And said R. I. Farrington and Edward Sawyer thereupon acknowledged said instrument to be the free act and deed of said corporation.

EARLE W. McELROY,

[Notarial Seal.] *Notary Public, Ramsey County, Minnesota.*

My commission expires April 14th, 1911.

STATE OF MINNESOTA,

County of Ramsey, ss:

On this 11th day of October, 1907, before me personally appeared Louis W. Hill and Edward Sawyer, to me known, who being by me first duly sworn each for himself did depose and say; That they are the President and Assistant Secretary, respectively, of the Great Northern Railway Company, the corporation described in and which executed the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation; 288 and that said instrument by authority of its board of directors. And said Louis W. Hill and Edward Sawyer thereupon acknowledged said instrument to be the free act and deed of said corporation.

EARLE W. McELROY,

[Notarial Seal.] *Notary Public, Ramsey County, Minnesota.*

My commission expires April 14th, 1911.

289 UNITED STATES OF AMERICA,

The State of North Dakota:

Department of State.

To all to whom these presents shall come:

I, Alfred Blaisdell, Secretary of State of the State of North Dakota and Keeper of the Great Seal thereof, do hereby certify that the annexed copy of Indenture made the 11th day of October, 1907, between The St. Paul, Minneapolis and Manitoba Railway Company and the Great Northern Railway Company has been compared by me with the records of the original in this Department and that the same is a true copy thereof, and of the whole of such records.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol in the City of Bismarck this 5th day of Dec. A. D. 1907.

[Great Seal of the State of North Dakota.]

ALFRED BLAISDELL,
Secretary of State.
 C. W. LA MOURE,
Deputy.

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4-205r.

Department of the Interior,

General Land Office,

Washington.

Nov. 25, 1919.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

L. T. C. LAMOR,
Recorder of the General Land Office.

Ex. "F."

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4-207.

"B."
 A. B.

Department of the Interior,

General Land Office,

Washington, D. C., November 26, 1919.

I hereby certify that the annexed copies of papers in Cash Entry No. 5266, Minot, North Dakota, are true and literal exemplifications from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

C. M. BRUCE,
*Assistant Commissioner of the
 General Land Office.*

[SEAL.]
 Exhibit "F."

292 Williston Herald Print.
 Government No. 4-007.
 Application No. 17768.

Homestead.

Land Office at Minot, N. D.

August 19, 1902.

I Philander Pollock of Williston, N. D., do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the E. $\frac{1}{2}$ N. W. & W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ of Section 18 in Township 155 of Range 99, containing 160 acres.

PHILANDER POLLOCK.

Land Office at Minot, N. D.

August August 20, 1902. 1902.

I, R. C. Sanborn Register of the Land Office do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and there is no valid adverse right to the same.

R. C. SANBORN,
Register.

Ex. "F."

U. S. Land Office, Minot, N. D.

STATE OF NORTH DAKOTA,
County of Ward, ss:

I, Philander Pollock being the person who made homestead entry No. 17768, at the Minot, N. D. do hereby relinquish to the United States a portion of said homestead entry namely North West Quarter of the North East Quarter of Section 18, Township 155, R. 99.

PHILANDER POLLOCK.

Subscribed and sworn to before me this 1st day of June, 1903.

R. C. SANBORN,
Register.

Ex. "F."

Homestead Proof—Testimony of Witness.

Harvey Frederick, being called as witness in support of the Homestead entry of Philander Pollock for E. $\frac{1}{2}$ N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of section 18, Township 155, range 99, testifies as follows:

Question 1. What is your name, age, and post-office address?

Answer. Harvey Frederick, 36 years of age; P. O. Address: Springbrook, N. D.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Farming land.

Ques. 5. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

Ans. August 20th, 1902. Established actual residence on claim about August 30th, 1902.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes. Settler is unmarried but is a divorced man.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Not absent, at all.

Ques. 8. How much of the homestead has the settler cultivated and for how many seasons did he raise crops thereon?

Ans. Five Acres; Raised crops one season.

Ques. 9. What improvements are on the land and what is their value?

Ans. House 14 x 41 frame, One Well about 46 ft. deep. One Coal shed 8 x 16. Total Value of improvements \$500.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

295 Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. No.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. I think settler has acted in entire good faith in perfecting this entry.

(Sign plainly with full christian name.)

HARVEY FREDERICK.

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 24th day of October 1903, at my office at Williston, in Williams County, N. Dak.

ZUNO BRUEGGER,

Clerk District Court, Williams Co., N. D.

(See Note On Fourth Page.)

(The testimony of witnesses must be taken at the same time and place, and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

Ex. "F."

296

(4-369.)

Homestead Proof—Testimony of Witness.

PAGE SWIMLEY, being called as witness in support of the Homestead entry of Philander Pollock for E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of section 18, township 155, range 99, testifies as follows:

Question 1. What is your name, age, and post-office address?

Answer. Page Swimley; 59 years of age; P. O. address; Springbrook, N. D.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Farming land.

Ques. 5. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

Ans. August 20th, 1902. Established actual residence about August 30th, 1902.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? If settler is unmarried, state the fact.)

Ans. Yes. Settler is unmarried but is a divorced man.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and

if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Not absent.

Ques. 8. How much of the homestead has the settler cultivated and for how many seasons did he raise crops thereon?

Ans. Between five and six acres. Raised crops one season.

Ques. 9. What improvements are on the land and what is their value?

Ans. Frame House 14x41; One Well about 46 feet deep. One Coal Shed 8x16. Total Value of improvements: \$500.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

297 Ans. Not to my knowledge.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell, any portion of the said homestead?

Ans. No.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. I think settler has acted in entire good faith in perfecting this entry.

(Sign plainly with full christian name.)

PAGE SWIMLEY,

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 24th day of October 1903, at my office at Williston, in Williams County, N. Dak.

ZENO BRUEGGER,
Clerk District Court Williams Co., N. D.

(See note on fourth page.)

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

Ex. F.

298

(4-369.)

Homestead Proof—Testimony of Claimant.

PHILANDER POLLOCK, being called as a witness in his own behalf in support of homestead entry No. 17768, for E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of section 18, township 155, range 99, testifies as follows:

Ques. 1. What is your name, age and post-office address?

Ans. Philander Pollock, 42 years of age, P. O. Address: Springbrook, N. D.

Ques. 2. Are you a native born citizen of the United States, and if so, in what State or Territory were you born?

Ans. I am a native born citizen of the United States and was born in the State of Indiana.

Ques. 3. Are you the identical person who made homestead entry, No. 17768, at the Minot land office on the 20th day of August 1902, and what is the true description of the land now claimed by you?

Ans. E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of Section 18 Township 155, Range 99. I am the identical person. (The N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ same section, township, range as above I relinquished to government in June 1903*)

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. House built within 10 days of filing, namely Aug. 20th, 1902, and established actual residence about August 30th, 1902. Frame House, 14x41. One Well about 46 feet deep; Coal Shed 8 x 16. Total value of improvements: \$500.00.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Myself. I am unmarried. I have resided continuously on said land since first establishing residence thereon. A divorced man.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Not absent.

Ques. 7. How much of the land have you cultivated each season and for how many seasons have you raised crops thereon?

Ans. Five acres cultivated. Raised crop one season.

299 Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city of town, or used in any way for trade and business?

Ans. No.

Question 9. What is the character of the land? Is it timber mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable.

Ans. Grazing and agricultural land. Sandy loam. Grazing and agricultural most valuable for.

Ques. 10. Are there any indications of coal, salines, or mineral of any kind, on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. Yes. The N. $\frac{1}{2}$ N. E. $\frac{1}{4}$ Section 19, Township 159, Range 76 made June 18th 1894 in Devils Lake, N. D., Land Office.

Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; if so, to whom and for what purpose?

Ans. No.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same and state where the same is kept.)

Ans. None.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral) made by you since August 30, 1890.

Ans. None.

(Sign plainly with full christian name.)

PHILANDER POLLOCK.

(In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.)

Ex. "F. W."

300 I hereby certify that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me this 24th day of October, 1903, at my office at Williston, Williams County, North Dakota.

(See note below.)

ZENO BRUEGGER,
Clerk of the District Court,
Williams Co., N. D.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX—Crimes—Chapter 4.

See, 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully, and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Section 1750.)

[Endorsed:] 4-369. Homestead Proof, Land Office at Minot, North Dakota. Original Application No. 17768. Final Certificate No. 5266. Approved: R. C. Sanborn, Register. F. E. Fox, Receiver. U. S. Land Office, Minot, N. D. Received from Zeno Bruegger Clerk, Dist. Ct. Williams Co. No Protest, Oct. 31, 1903. R. C. Sanborn, Register. F. E. Fox, Receiver.

Final Affidavit Required of Homestead Claimants.

Section 2301 of the Revised Statutes of the United States.

I, Philander Pollock, having made a homestead entry of the E. 1/4, N. W. 1/4 S. W. 1/4 N. E. 1/4 Section No. 18 in Township No. 159 of Range 99, subject to entry at Minot, N. D., under Section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. 2301 of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a native born citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the 30th day of August, 1902, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except N. 1/2 N. E. 1/4 of Section 19 Township 159, Range 76.

(Sign plainly with full christian name.)

PHILANDER POLLOCK.

301 I, Zeno Bruegger, of Williston, N. D. do hereby certify that the above affidavit was subscribed and sworn to before me this 24th day of October 1903, at my office at Williston in Williams County, North Dakota.

ZENO BRUEGGER.

Clerk of District Court, Williams Co., N. D.

Ex. "F."

302 *Homestead Certificate No. 1981, Application 36356.*

THE UNITED STATES OF AMERICA:

To all to whom these Presents shall come, Greeting:

Whereas, There has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Minot, North Dakota, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Philander Pollock, assignee by mesne conveyance of John Nolan, has been established and duly consummated.

in conformity to law, for the North West quarter of the North East quarter of Section eighteen in Township one hundred and fifty-five North of Range ninety-nine West of the Fifth Principal Meridian in North Dakota, containing forty acres, according to the official plat of the survey of said land, returned to the General Land Office by the Surveyor General.

Now know ye, that there is, therefore granted by the United States unto the said Philander Pollock the tract of land above described: To have and to hold the said tract of land, with the appurtenances thereof, unto the said Philander Pollock and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the twenty-eighth day of February, in the year of our Lord one thousand nine hundred and six, and of the Independence of the United States the one hundred and thirtieth.

By the President:

T. ROOSEVELT,
By T. M. McKEAN,

Secretary.

C. H. BRUSH,
Recorder of the General Land Office.

[SEAL.]

Ex. "F."

303

Ex. 2.

No. 7534.

B. W. Co.,

Official Abstracters,

Williams County, North Dakota.

Affiliated with Divide County Abstract Co., Crosby, N. D.

W. H. Westergaard, President.

J. Jos. Blair, Vice-President.

Westergaard-Blair Co.

Incorporated.

Abstracts of Title.

Capital \$25,000.00.

Williston, N. D.

An abstract of the record title to the following described premises, in Williams County, North Dakota:

Lots Numbered Three (3) and Four (4) in Block Numbered Seven (7), Townsite of East Springbrook, Williams Co., N. D.

Plat.

Copyright 1911 by Geo. D. Sunderhauf.

Brown, Treacy & Sperry Co., St. Paul.

304 *Abstract of Title to Lots 3 & 4, Block 7, East Springbrook, Williams Co., N. D.*

1.

Receiver's Receipt.

Receiver's Office at Minot, N. D.

T. E. Fox, Receiver,

to

Philander Pollock, Assignee of Jennie Fields, Sole Heir of John Nolan, Deceased.

Document No. 3827.

Dated Oct. 31, 1905.

Filed Nov. 11, 1905 at 4.00 P. M.
Recorded in Book "F" Deeds, page 492.
Consideration \$1.00.

Acknowledges receipt of \$1.00 being the balance of payment required by law for the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 18, in Township 155 North, of Range 99 West, containing 40 acres.

2.

Patent.

United States of America

to

Philander Pollock, Assignee by Mesne Conveyance of John Nolan.

Document No. 5289.
Dated Feb. 28, 1906.
Filed Mar. 30, 1906 at 2.20 P. M.
Recorded in Book "A3" Deeds page 54.

Conveys the Northwest quarter of Northeast quarter of Section 18 in Township 155 North, of Range 99 West, containing 40 acres.
Said land granted pursuant to the Act of Congress of May 20, 1862 and the acts supplemental thereto.

3.

Contract.

Philander Pollock

to

Nicholas W. Comford and Kingston & Kingston (a Copartnership Composed of R. H. Kingston, J. W. Kingston, and J. L. Kingston.)

Document No. 720.
Dated June 1, 1903.
Filed June 2, 1903 at 3.00 P. M.
Recorded in Book "A" Misel. page 275.
Consideration \$500.00.

"That in consideration of \$500.00 paid by the said parties of the second part to the party of the first part conveys to Nicholas W. Comford a one fourth undivided interest in the N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of Section 18, in Township 155 Range 99 and the party of the first part also conveys to Kingston & Kingston (the copartnership above described) a one fourth undivided interest in the tract of land above described."

"Upon the receipt of final receipt for said land first party shall

give Nicholas W. Comford a warranty deed conveying a one fourth undivided interest and at the same time give warranty deed to Kingston & Kingston conveying to them an undivided one fourth interest in said land."

"The object of the parties to this contract is to form a Townsite Co. to plat a Townsite and to sell the lots of the said Townsite."

Signed as follows: "Philander Pollock, Nicholas W. Comford, Kingston & Kingston per R. H. Kingston."

Acknowledged June 1, 1903 by Philander Pollock, Nicholas W. Comford and R. H. Kingston representing Kingston & Kingston (a copartnership composed of R. H. Kingston, J. W. Kingston and J. L. Kingston) before George A. McGee, U. S. Commissioner, District of N. D. (Seal.)

305

4.

Assignment of Contract.

Kingston & Kingston (a Co-partnership Composed of R. H. Kingston, J. W. Kingston, & J. L. Kingston), by R. H., J. W., & J. L. Kingston,

to

Nicholas W. Comford.

Document No. 11230.

Dated May 13, 1907.

Filed May 24, 1907 at 3.20 P. M.

Recorded Book 14 Mtgs. page 467.

Consideration, —.

Assigns all right, title and interest in and to a contract for deed made by Philander Pollock, to Nicholas W. Comford, Kingston and Kingston, a co-partnership, dated June 1, 1903 filed June 2, 1903 at 3.00 P. M. and recorded — Book A. Misc. page 275. Object of this assignment being to vest in said second party all right, title and interest which we may have, or be entitled to under said contract.

Acknowledged May 18, 1907 by R. H. Kingston before Charles O. Bulmer, N. P. Whateow County, Wash. (seal.) Commission expires Mar. 5, 1910.

Acknowledged May 23, 1907 by J. W. Kingston before Duncan McLellan N. P. Ward County, N. D. (seal.) Commission expires Jan. 14, 1911.

Acknowledged May 23, 1907 by J. L. Kingston before Duncan McLellan N. P. Ward County, N. D. (seal.) Commission expires Jan. 14, 1911.

No witnesses.

5.

Quitclaim Deed.

R. H. Kingston, Elenora Kingston (Wife), J. L. Kingston (Widower), J. W. Kingston, and Christa Kingston (Wife)
to
Nicholas W. Comford.

Document No. 11231.

Filed May 24, 1907, at 3:25 P. M.

Dated May 20, 1906.

Recorded Book K. Deeds, page 91.

Consideration \$250.00.

Conveys and quitclaims all interest of parties of the first part in
and to the N. W. 1/4-N. E. 1/4 Section 18, Township 155 North, of
Range 99 West, containing 40 acres including the platted townsite
of East Springbrook.

Further guarantee the above described property to be free from
all mortgages or incumbrances by the above grantors of this Quit-
claim deed.

Acknowledged Mar. 20, 1906 by said R. H. Kingston and Elenora
Kingston his wife and J. W. Kingston a widower before Jacob
Widmann, N. P. Williams County, N. D. (seal.) Commission ex-
pires April 20, 1911.

Acknowledged Mar. 26, 1906 by J. L. Kingston and Christa
Kingston his wife before Leon A. Murrills, N. P. Williams County,
N. D. (seal.) Commission expires July 1, 1907.

2 Witnesses.

306

6.

Quitclaim Deed.

Philander Pollock (Unmarried),
to
Nicholas W. Comford.

Document No. 32874.

Dated Feb. 27, 1909.

Filed Mar. 2, 1909, at 4:15 P. M.

Recorded in Book R. Deeds page 285.

Consideration \$300.00.

Remise, release and quit claim the N. W. 1/4 N. E. 1/4 of Section
18, in Township 155 North of Range 99 West.

Acknowledged Feb. 27, 1909 by said Philander Pollock, unmar-
ried before Jacob Widmann, N. P. Williams Co., N. D. (seal.)
Commission expires April 20, 1911.

2 Witnesses.

7.

Notice of Levy.

District Court, Williams County, N. D.

R. M. CALDERWOOD, Plaintiff, by L. L. LAMPMAN, Sheriff, by JOHN FAGA, Deputy Sheriff,

vs.

W. E. BROCK.

Document No. 23265.

Dated Aug. 7, 1908.

Filed Aug. 7, 1908 at 4.30 P. M.

Recorded in vol. 40 of mtgs. page 30.

Take notice that by virtue of a Warrant of Attachment duly issued in this action by A. H. Brown, Clerk of District Court, Williams County N. D. I have levied upon the following: All the right, title, interest and equity of said W. E. Brock in and to N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of Section 18, and N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ of Section 17, Township 155 North, of Range 99 West, Plaintiff Alleging that defendant has an interest therein as heir of Susan Brock, deceased. This levy further covers all of defendant's interest in any building or crops growing on said premises. Plaintiff claims to recover \$79.00 and interest making a total amount of \$132.58.

L. L. LAMPMAN,
Sheriff of Williams County, N. D.,
By JOHN FAGAN,
Deputy Sheriff, Williston, North Dakota.

A. L. KNAUF,
Attorney for Plaintiff.

8.

Partial Release.

A. L. Knauf, Attorney for Plaintiff,

to

W. E. Brock.

Document No. 37195.

Dated Nov. 10, 1908.

Filed July 2, 1909 at 1.18 P. M.

Recorded in vol. 61 of Mtgs. page 94.

Dismisses the attachment in case of R. M. Calderwood, Plaintiff, versus W. E. Brock, Defendant, dated ____ —, ____ and filed August, 7, 1908, at 4.30 P. M. and recorded in Book 40, of mortgages

30, in so far as it affects the N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of Section 18, in Township 155, North, of Range 99 West.

Acknowledged Nov. 10, 1908 by A. L. Knauf, Attorney for Plaintiff, before Ella T. Gogin, N. P. Williams Co., N. D. (Seal.) Commission expires November 8, 1911.

307

10.

Plat Entitled "East Springbrook, Williams Co., N. D."

Philander Pollock, Unmarried; Nicholas W. Comford and Elizabeth Comford, Wife; R. H. Kingston and Mary L. Kingston, Wife; W. Kingston and Christa Kingston (Wife), J. L. Kingston (Single)

to

Whom Concerned.

Document No. 790.

Dated July 9, 1903.

Filed July 9, 1903 at 2.00 p. m.

Recorded Book B Deeds, page 500.

Philander Pollock, unmarried, Nicholas W. Comford and Elizabeth Comford, his wife, and the firm of Kingston and Kingston, (W. Kingston and Christie Kingston, his wife, J. L. Kingston, single and R. Kingston and Mary Kingston, wife) hereby certify that they are the sole owners and proprietors of the following described tract of land, to-wit:

The Northwest quarter of the Northeast quarter of Section 18, in Township 155 North, Range 99 West, and have caused such portion thereof as is shown on the plat hereto annexed to be surveyed and platted for townsite purposes. That they have same to be platted for record in the office of the Register of Deeds in and for Williams County, N. D. according to the statute in such case made and provided.

And they hereby dedicate to the public use all of the streets, avenues, and alleys shown hereon.

Acknowledged by said parties July 9, 1903 before Willard B. Overson, N. P. Williams County, N. D. (Seal.) Commission expires Jan. 23, 1907.

1 witness.

11.

J. C. Field, Surveyor,

to

Whom Concerned.

I hereby certify that I have surveyed and platted the land embraced in the Townsite of East Springbrook and that I have caused to be placed the iron monuments as shown on this map, and a hard

pine stake 2 x 2 x 10 inches driven firmly into the ground at each outside corner of blocks, lots, streets and alleys, hereon shown, I further certify that the map attached hereto is a correct map of said survey.

J. C. FIELD,

Surveyor.

Subscribed and sworn to July 9, 1903 before

WILLARD B. OVERSON,

N. P., Williams County, N. D. [Seal.]

Commission expires Jan. 23, 1907.

308

12.

Warranty Deed.

Philander Pollock, Single,

to

Nicholas W. Comford.

Document No. 11047.

Dated May 13, 1907.

Filed May 14, 1907 at 9.10 a. m.

Recorded Book "D" Deeds page 616.

Consideration \$500.00.

Undivided one-half interest in and to all Blocks 1, 2, 3, 4, 5, 6, 7, 8 of Town of East Spring Brook. Also undivided one-half interest in the unplatte portion of N. W. $\frac{1}{4}$ -N. E. $\frac{1}{4}$, of Section 18, in Township 155 North, of Range 99 West.

Meaning to convey all interest of first part- which he contracted and agreed on June 1, 1903 to sell and convey to second part-, R. H. Kingston, J. W. Kingston and J. L. Kingston.

Acknowledged May 13, 1907 by Philander Pollock, single, before N. B. Ludowese, N. P. Williams County, N. D. (Seal.) Commission expires Dec. 24, 1908.

2 Witnesses.

13.

Warranty Deed.

Philander Pollock, Nicholas W. Comford

to

F. M. Craig, B. S. Marple.

Document No. 40446.

Dated Apr. 3, 1906.

Filed Oct. 18, 1909 at 2.28 p. m.

Recorded Book 28 Deeds page 286.

Consideration \$40.00.

Conveys Lots 3 and 4 of Block 7, East Spring Brook, Williams County, North Dakota.

Acknowledged Apr. 3, 1906 by Philander Pollock, and Nicholas W. Comford, before Jacob Widmann, N. P. Williams County, N. Dak. (Seal.) Commission expires Apr. 20, 1911.

2 witnesses.

14.

Warranty Deed.

Berry S. Marple and Emma A. Marple, His Wife,
to
Frank M. Craig.

Document No. 7528.

Dated October 9, 1906.

Filed October 11, 1906 at 11:32 a. m.

Recorded Book "H" Deeds page \$200.

Consideration \$475.00.

Conveys Lots 3 and 4 of Block 7, East Spring Brook, N. Dak.
Acknowledged Oct. 9, 1906 by Berry S. Marple, and Emma A. Marple, his wife, before Jacob Widmann, N. P. Williams County, N. Dak. (Seal.) Commission expires Apr. 20, 1911.

2 witnesses.

209

15.

Mortgage.

Frank M. Craig and Naney A. Craig, His Wife,
to
J. L. Kingston.

Document No. 7532.

Dated Oct. 9, 1906.

Filed Oct. 11, 1906 at 11:55 a. m.

Recorded Book "11" Mtges. page 314-316.

Consideration \$677.15.

Mortgages the Lots 3 and 4 Block 7, East Spring Brook, N. Dak.
Secures \$677.15 payable Oct. 9, 1908 according to note with interest at 8%.

Acknowledged Oct. 9, 1906 by Frank M. Craig, and Naney A. Craig, his wife, (who signs Naney A. Craig) before Jacob Widmann, N. P. Williams County, N. Dak. (Seal.) Commission expires Apr. 20, 1911.

2 Witnesses.

16.

Satisfaction.

J. L. Kingston

to

Frank M. Craig, Nancy A. Craig (Wife).

Document No. 41213.

Dated Oct. 15, 1909.

Filed Nov. 4, 1909 at 9:46 a. m.

Recorded Book 45 Mtges. Page 434.

Consideration payment.

Satisfies a mortgage made Oct. 9, 1906 by Frank M. Craig, and Nancy A. Craig, wife, to J. L. Kingston, and recorded Book 11 Mtges. page 314.

Acknowledged Oct. 16, 1909 by J. L. Kingston, before Jacob Widmann, N. P. Williams County, N. D. (Seal.) Commission expires Apr. 20, 1911.

17.

Mortgage.

Frank M. Craig and B. S. Marple

to

J. L. Kingston.

Document No. 6222.

Dated June 2, 1906.

Filed June 6, 1906 at 5:30 p. m.

Recorded Book "10" Mtges. page 4.

Consideration \$390.40.

Mortgages Lots 3 and 4, Block 7, in East Spring Brook, N. Dak. Secures \$390.40 payable according to one certain promissory note.

Acknowledged June 2, 1906 by Frank Craig and B. S. Marple, before R. H. Kingston, N. P. Williams County, N. D. (Seal.) Commission expires May 13, 1910.

2 witnesses.

18.

Satisfaction.

J. L. Kingston

to

Frank Craig and B. S. Marple.

Document No. 7531.

Dated Oct. 9, 1906.

Filed Oct. 11, 1906 at 11:45 a. m.

Recorded Book "9" Mtges. page 172.

Satisfies a mortgage made June 2, 1906 by Frank Craig, and B. S. Marple, and recorded Book "10" Mtges. page 4.

Acknowledged Oct. 9, 1906 by J. L. Kingston, before Jacob Widmann, N. P. Williams County, N. Dak. Commission expires Apr. 20, 1911. (Seal.)

No witnesses.

310

19.

Mortgage.

Frank M. Craig, Nancy A. Craig (Wife)

to

Jacob Widmann,

Document No. 40424.

Dated Oct. 16, 1909.

Filed Oct. 18, 1909 at 1:44 p. m.

Recorded Book 56 Mtges. page 234.

Consideration \$532.50.

Mortgages Lots 3 and 4, of Block 7, Town or Village of E. Spring Brook.

Secures \$532.50 payable Oct. 1, 1910 according to note with interest at 12%.

Acknowledged Oct. 16, 1909 by said mortgagors before Chas. E. Ulrich, N. P. Williams County, N. D. (Seal.) October 12, 1914, expiration of commission.

2 witnesses.

311

20.

Satisfaction.

Jacob Widmann

to

Frank M. Craig and Nancy V. Craig (Husband and Wife).

Document Number 69973.

Dated Dec. 1, 1911.

Filed Dec. 8, 1911 at 1:29 P. M.

Recorded Book 72 Mtgs, page —.

Satisfies a mortgage made Oct. 16, 1909 by Frank M. Craig and Nancy V. Craig, husband and wife, to Jacob Widmann, and recorded in Book 56 of mortgages, page 234.

Acknowledged Dec. 1, 1911 by Jacob Widmann before Chas. E. Ulrich, N. P. Williams Co., N. D. (Seal.) Commission expires Oct. 12, 1914.

2 Witnesses.

312 STATE OF NORTH DAKOTA,
County of Williams, ss:

The Westergaard-Blair Co., has examined the records in the office of the Register of Deeds, Clerk of the District Court, Treasurer and Auditor of said County, also its books and records of Abstracts of Title to lands in said County and

Hereby certifies, that the within Abstract containing Nineteen notations, numbered from One to Nineteen, inclusive, is a correct abstract of all the instruments of record in the office of the Register of Deeds, affecting the title to the premises described in the caption thereof.

And further certifies, that there are no Judgments or Mechanics' Liens against Philander Pollock, Nicholas W. Comford, Berry S. Marple or Frank M. Craig, as shown by the records in the office of the Clerk of the District Court of Williams County, North Dakota, which are liens on said premises.

And further certifies, That there — no taxes due and unpaid, Tax Sales or forfeitures unredeemed; or unrecorded Tax Deeds affecting the within described land, or unpaid Personal Property Taxes, which are a lien against the said premises.

In witness whereof, The said Westergaard-Blair Co., has caused these presents to be signed by its Abstracter, and its official seal to be hereunto affixed at Williston, North Dakota this 4th day of November A. D. 1909 at 9:46 o'clock A. M.

[SEAL.]

WESTERGAARD-BLAIR CO.,
By J. J. BLAIR,
Abstracter.

No. 3247.

Certificate of Continuation.

The Westergaard-Blair Co., hereby certifies that the within Abstract of Title has been continued from the 4th, day of November, 1909, at 9:46 o'clock A. M. (numbered from Twenty to twenty-inclusive,) and that the said continuation contains all the instruments of record in the office of the Register of Deeds affecting the title to the premises therein described, since the day and hour above named.

And further certifies, that there are no Judgments or Mechanics' Liens against Frank M. Craig, as shown by the records in the office of the Clerk of the District Court of Williams County, North Dakota, which are liens on said premises.

And further certifies, That there are no delinquent taxes due and unpaid, Tax Sales or forfeitures unredeemed; or unrecorded Tax Deeds affecting the within described land, or unpaid Personal Property Taxes, which are a lien against the said premises as appears of record, except 1910 taxes on Lot 3, amounting to \$21.34 plus 10% penalty and 25¢ advertising fees, and on Lot 4, amounting to \$1.02 plus 10% penalty and 25¢ advertising fees.

In witness whereof, The said Westergaard-Blair Co., has caused these presents to be signed by its Abstracter, and its official seal to be hereunto affixed at Williston, North Dakota, this 8th, day of December, A. D. 1911 at 1:20 o'clock P. M.

[SEAL.]

WESTERGAARD-BLAIR CO.,

By J. J. BLAIR,

Abstracter.

No. 7534.

Ex. 3.

No. 12879.

B. W. Co.,

Official Abstracters,

Williams County, North Dakota.

Affiliated with Divide County Abstract Co., Crosby, N. D.

W. H. Westergaard, President.

J. Jos. Blair, Vice-President.

Westergaard-Blair Co.,

Incorporated.

Abstracts of Title.

Capital \$25,000.00.

Williston, N. D.

An abstract of the record title to the following-described premises, in Williams County, North Dakota:

Lot Numbered Three (3), in Block Numbered Eight (8), in East Spring Brook, N. D.

Plat.

Copyright 1911 by Geo. D. Sunderhauf.

Brown, Treacy & Sperry Co., St. Paul.

315 *Abstract of Title to Lot Numbered Three (3), in Block Numbered Eight (8), in East Spring Brook, Williams County, North Dakota, Said Town Being a part of the N. W. 1/4 of N. E. 1/4, Section 18, Township 155, Range 99 W.*

1.

Receiver's Receipt.

U. S. Land Office, Minot, N. D.

T. E. Fox, Receiver,

to

Philander Pollock, Assignee of Jennie Fields, Sole Heir of John Nolan, Deceased.

Document No. 3827.

Dated Oct. 30, 1905.

Filed Nov. 11, 1905.

Recorded Book F. Deeds, page 492.

Consideration \$1.00.

Acknowledged the receipt of \$1, being the balance of payment required by law for the N. W. 1/4 of N. E. 1/4 of Section No. 18, in Township No. 155 N., of Range No. 99 W., containing 40 acres.

2.

Patent.

United States of America

to

Philander Pollock, Assignee by Mesne Conveyance of John Nolan.

Document No. 5289.

Dated Feb. 28, 1906.

Filed Mar. 30, 1906 at 2:20 P. M.

Recorded Book A3 Deeds, page 54.

Conveys the Northwest quarter of the Northeast quarter, of Section 18, in Township 155 North, of Range 99 West of the Fifth Principal Meridian, containing 40 acres.

Said land granted pursuant to the Act of Congress of May 20, 1862 and the acts supplemental thereto.

3.

Contract.

Philander Pollock

to

Nicholas W. Comford and Kingston & Kingston (a Copartnership Composed of R. H. Kingston, J. W. Kingston, and J. L. Kingston).

Document No. 720.

Dated June 1, 1903.

Filed June 2, 1903 at 3 P. M.

Recorded Book A Misel., page 275.

Consideration \$500.00.

Recites: That in consideration of \$500. paid by the said parties of the second part to the party of the first part conveys to Nicholas W. Comford a one fourth undivided interest in the N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of Section 18, in Township 155 Range 99 and the party of the first part also conveys to Kingston & Kingston (the copartnership above described) a one fourth undivided interest in the tract of land above described."

"Upon the receipt of final receipt for said land first party shall give Nicholas W. Comford a warranty deed conveying a one fourth undivided interest and at the same time give warranty deed to Kingston & Kingston conveying to them an undivided one fourth interest in said land."

"The object of the parties to this contract is to form a Townsite Co. to plat a Townsite and to sell the lots of the said Townsite.

Signed as follows: "Philander Pollock, Nicholas W. Comford, Kingston & Kingston per R. H. Kingston."

Acknowledged June 1, 1903 by Philander Pollock, Nicholas W. Comford and R. H. Kingston representing Kingston & Kingston (a copartnership composed of R. H. Kingston, J. W. Kingston and J. L. Kingston) before George A. McGee, U. S. Commissioner, District of N. D. (Seal.)

Assignment of Contract.

Kingston & Kingston (a Copartnership Composed of R. H. Kingston, J. W. Kingston, and J. L. Kingston), by R. H., J. W. Kingston, and J. L. Kingston,

to

Nicholas W. Comford.

Document No. 11230.

Dated May 13, 1907.

Filed May 24, 1907 at 3.20 P. M.

Recorded Book 14 Mtges., page 467.

Assigns all right, title and interest in and to a certain contract for deed made by Philander Pollock to Nicholas W. Comford, Kingston & Kingston, a copartnership, dated June 1, 1903, filed June 2, 1903 at 3.00 P. M., recorded Book A. Misel. Records, page 275, whereby the said Philander Pollock agreed to convey to said firm of Kingston & Kingston an undivided one fourth interest in the Northwest quarter of the Northeast quarter, of Section 18, Township 155, Range 99 West, as soon as the final receipt should issue; the object of this assignment being to vest in the said Nicholas W. Comford all the right title or interest which we may have, or be entitled to under said contract, hereby waiving conveyance from said Pollock to the firm of Kingston & Kingston, or either of its members of any portion of the above described land.

Acknowledged May 18, 1907 by R. H. Kingston before Charles O. Bulmer, N. P., Whatcom County, Wash. (Seal.) Comm. expires Mar. 5, 1910.

Acknowledged May 23, 1907, by J. W. Kingston before Duncan McLellan, N. P., Ward County, N. D. (Seal.) Comm. expires Jan. 14, 1911.

Acknowledged May 23, 1907 by J. L. Kingston before Duncan McLellan, N. P., Ward County, N. D. (Seal.) Comm. expires Jan. 24, 1911.

Quit Claim Deed.

R. H. Kingston, Elenora Kingston, His Wife; J. L. Kingston, a Widower, and J. W. Kingston and Christa Kingston, His Wife,

to

Nicholas W. Comford.

Document No. 11231.

Dated May 20, 1906.

Filed May 24, 1907 at 3.25 P. M.

Recorded Book K. Deeds, page 91.
Consideration \$250.00.

"Grant, Bargain, Sell, Remise, Release and Quit Claim our right, title and claim"—to the Northwest quarter of the Northeast quarter, of Section 18, in Township 155 North, of Range 99 West of the Fifth Principal Meridian, including the platted townsite of East Spring Brook.

"We further guarantee this above described property to be free from all mortgages or incumbrances by the above grantors of this quit claim deed."

Acknowledged Mar. 20, 1906 by R. H. Kingston and (his wife) Elenora Kingston, and J. L. Kingston, a widower, before Jacob Widmann, N. P., Williams County, N. D. (Seal.) Comm. expires Apr. 20, 1911.

Acknowledged Mar. 26, 1906 by J. W. Kingston and his wife Christa Kingston, before Leon A. Murrills, N. P., Williams County, N. D. (Seal.) Comm. expires July 1, 1907. 2 witnesses.

317

6.

Quit Claim Deed.

Philander Pollock (Unmarried)

to

Nicholas W. Comford.

Document No. 32874.

Dated Feb. 27, 1909.

Filed Mar. 2, 1909 at 4:15 P. M.

Recorded in Vol. R of Deeds page 295.

Consideration: \$300.00.

Remise, release and quit claim the N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ of Section 18, in Township 155, North, of Range 99 West.

Acknowledged Feb. 27, 1909, by Said Philander Pollock, unmarried before Jacob Widmann, N. P. Williams Co., N. D. (Seal.) Commission expires April 20, 1911.

2 Witnesses.

7.

Notice of Levy.

District Court, Williams County, N. D.

R. M. CALDERWOOD, Plaintiff, by L. L. LAMPMAN, Sheriff, by
JOHN FAGAN, Deputy Sheriff,
vs.

W. E. BROCK, Defendant.

Document No. 23265.
Dated Aug. 7, 1908.

Filed Aug. 7, 1908 at 4.30 P. M.
Recorded in Vol. 40 of Mtgs. page 30.

Take notice that by virtue of a Warrant of Attachment duly issued in this action by A. H. Brown, Clerk of District Court, Williams County, N. D. I have levied upon the following: all the right, title, interest and equity of said W. E. Brock in and to N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of Section 18, and N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ of Section 17, in Township 155 North, of Range 99 West. Plaintiff alleging that defendant has an interest therein as heir of Susan Brock, deceased. This levy further covers all of defendant's interest in any building or crops growing on said premises. Plaintiff claims to recover \$79 and interest making a total amount of \$132.58.

L. L. LAMPMAN,
Sheriff of Williams County, N. D.,
By JOHN FAGAM,
Deputy Sheriff.

A. L. KNAUF,
Attorney for Plaintiff,
Williston, North Dakota.

8.

Partial Release of Levy.

A. L. Knauf, Attorney for Plaintiff,
to
W. E. Brock.

Document No. 37195.
Dated Nov. 10, 1908.
Filed July 2, 1909, at 1.18 P. M.
Recorded in vol. 61 of Mtgs. page 94.

Dismisses the attachment in case of R. M. Calderwood, Plaintiff versus W. E. Brock. Defendant, dated — —, —, and filed August 7, 1908, at 4.30 P. M. and recorded in vol. 40 of Mtgs. page 30, in so far as it affects the N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of Section 18, in Township 155 North, of Range 99 West.

Acknowledged November 10, 1908 by said A. L. Knauf, Attorney for Plaintiff, before Ella T. Gogin, N. P. Williams Co., N. D. (Seal.) Commission expires November 8, 1911.

318

9.

Plat Entitled "East Springbrook, Williams Co., N. D."

Philander Pollock, Unmarried; Nicholas W. Comford and Elizabeth Comford, His Wife; R. H. Kingston and Mary L. Kingston, His Wife; W. Kingston and Christa Kingston, His Wife, and J. L. Kingston, Single,

to

The Public.

Document No. 790.

Dated July 9, 1903.

Filed July 9, 1903 at 2 P. M.

Recorded Book B. Deeds, page 500.

"Certificate of Ownership and Dedication."

Philander Pollock, unmarried, Nicholas W. Comford and Elizabeth Comford, his wife, and the firm of Kingston and Kingston (W. Kingston and Christie Kingston, his wife, J. L. Kingston, single, and R. Kingston and Mary L. Kingston, his wife) hereby certify that they are the sole owners and proprietors of the following described tract of land, to wit: The Northwest quarter of the Northeast quarter, of Section Eighteen (18) Township One Hundred Fifty-five (155 N.) Range Ninety-nine (99) West, Fifth P. M. of N. D. (N. W. N. E., See, 18 T. 155 N. R. 99 W.) and have caused such portion thereof as is shown on the plat hereto annexed to be surveyed and platted for townsite purposes. That they have same to be platted for record in the office of the Register of Deeds in and for Williams Co., North Dak. according to the statute in such case made and provided. And they hereby dedicate to the public use all of the streets, avenues and alleys shown hereon."

Acknowledged by said parties July 9, 1903, before Willard B. Overton, N. P. Williams County, N. D. (Seal.) Comm. expires Jan. 23, 1907.

One witness.

10.

"Surveyor's Certificate."

J. C. Field, Surveyor,

to

The Public.

"I hereby certify that I have surveyed and platted the land embraced in the Townsite of East Spring Brook and that I have caused to be placed the iron monuments as shown on this map, and a hard

pine stake 2 x 2 x 10 inches driven firmly into the ground at each outside corner of blocks, Lots, streets and alleys hereon shown. I further certify that the map attached hereto is a correct map of said survey."

(Signed)

J. C. FIELD,

Surveyor.

Subscribed and sworn to July 9, 1903, before

WILLARD B. OVERSON,
N. P., *Williams County, N. D.* [seal.]

Comm. expires Jan. 23, 1907.

11.

Power of Attorney.

Elenora W. Kingston

to

R. H. Kingston.

Document No. 5055.

Dated Mar. 12, 1906.

Filed Mar. 12, 1906 at 4:05 P. M.

Recorded Book A 2 Miscl., page 496.

Appoints party of the second part true and lawful Attorney, to Sign, seal, acknowledge and deliver deeds of conveyance to any and all lots, or any certain lot or lots in Blocks One, Two, Three, Four, Five, Six, Seven, and Eight (1, 2, 3, 4, 5, 6, 7, 8) in East Spring Brook, Williams Co. N. D. or to make contracts for the sale of the same.

Acknowledged March 12, 1906 by Elnora W. Kingston, wife of Ross H. Kingston, before Willard B. Overson, N. P. Williams County, N. D. (Seal.) Commission expires Jan. 23, 1907.

2 witnesses.

12.

Quitclaim Deed.

Philander Pollock, Unmarried; J. L. Kingston, Widower; Nicholas W. Comford and Elizabeth Comford, His Wife; J. W. Kingston and Christa Kingston, His Wife,

to

R. H. Kingston.

Doc. No. 5064.

Dated Feb. 13, 1906.

Filed March 13, 1906 at 11 A. M.

Recorded Book C. of Deeds, Page 138.

Consideration \$230.00.

319

(Continuation of No. 12.)

Quit claims the Lot 3 of Block 8 and other lots in East Spring Brook, Williams County, N. D.

Acknowledged Feb. 15, 1906 by Philander Pollock, unmarried, and J. L. Kingston, a widower, before Jacob Widmann, N. P., Williams County, N. D. (Seal.) Comm. expires Apr. 20, 1911.

Acknowledged Feb. 16, 1906 by J. W. Kingston and Christa Kingston before Ben. W. Hosmer, N. P., Ward County, N. D. (Seal.) Comm. Expires Dec. 2, 1910.

Acknowledged Feb. 10, 1906, by Nicholas W. Comford and Elizabeth Comford, Husband and wife, before J. P. Smerud, N. P., Ward County, N. D. (Seal.) Comm. Expires May 15, 1907.

3 witnesses to all signatures.

13.

Warranty Deed.

R. H. Kingston and Elore Kingston, His Wife, by R. H. Kingston, Her Attorney in Fact,

to

Mrs. Gertrude Ulrich.

Document No. 5516.

Dated Mar. 30, 1906

Filed Apr. 16, 1906 at 2:45 P. M.

Recorded Book D Deeds, page 463.

Consideration \$50.00.

"Grant, Bargain, Sell and Convey" Lot No. 3, in Block No. 8, of the village of Spring Brook, North Dakota.

Acknowledged Mar. 30, 1906 by R. H. Kingston, who signed in behalf of himself and his wife, Elenora Kingston, before Jacob Widmann, N. P., Williams County, N. D. (Seal.) Comm. expires Apr. 20, 1906.

2 witnesses.

14.

Warranty Deed.

Philander Pollock, Single,

to

Nicholas W. Comford.

Document No. 11047.

Dated May 13, 1907.

Filed May 14, 1907 at 9:10 A. M.

Recorded Book D Deeds, page 616.

Consideration \$500.00.

Conveys an undivided one half interest in and to the following: All of Blocks One, Two, Three, Four, Five, Six, Seven and Eight, of the Town of East Spring Brook, N. D. * * * and also an undivided one half interest in and to the unplatte portion of the Northwest quarter of the Northeast quarter, of Section 18, in Township 155 North, of Range 99 West * * * meaning to convey all interest of the party of the first part which he contracted and agreed on June 1, 1903 to sell and convey to Nicholas W. Comford, R. H. Kingston, J. W. Kingston and J. L. Kingston.

Acknowledged May 13, 1907 by Philander Pollock, single, before N. M. Ludowese, N. P., Williams County, N. D. (Seal.) Comm. Expires Dec. 24, 1908.

2 witnesses.

15.

Warranty Deed.

Gertrude Ulrich

to

Eli Kingston and Charlie E. Ulrich.

Document No. 12271.

Dated July 23, 1907.

Filed July 26, 1907 at 5.10 A. M.

Recorded Book L Deeds, page —.

Consideration \$800.00.

"Grant, Bargain, Sell, and Convey" * * * Lot 3 in Block 8 of the Village of East Spring Brook, N. D.

Acknowledged July 24, 1907, by Gertrude Ulrich, before Jacob Widmann, N. P., Williams County, N. D. (Seal.) Comm. expires Aug. 20, 1912.

2 witnesses.

320

16.

Warranty Deed.

Charlie E. Ulrich and Mary Ulrich (His Wife) and Eli Kingston and Edna Kingston (His Wife)

to

Eli Kingston.

Document Number 80065.

Dated Jan. 30, 1911.

Filed Jan. 15, 1913 at 4.13 P. M.

Recorded Book 42 Deeds, page 548.

Consideration \$4,000.00.

Conveys Lot 3, Block 8, Village of East Spring Brook.

Acknowledged Jan. 30, 1911 by Charlie E. Ulrich and Mary Ulrich, his wife, and Eli Kingston and Edna Kingston, his wife, before H. D. Schaaf, N. P. Williams Co., N. D. (Seal.) Commission expires July 21, 1912.

2 witnesses.

17.

Warranty Deed.

Eli Kingston and Edna Kingston (His Wife)

to

Spring Brook Trading Co., a Corporation.

Document Number 101,363.

Dated Apr. 29, 1915.

Filed May 3, 1915 at 11:37 A. M.

Recorded Book 50 Deeds, page —.

Consideration \$130.00.

Conveys Lot 3, Block 8, of the Village of East Spring Brook.

Acknowledged Apr. 29, 1915 by Eli Kingston and Edna Kingston, his wife, before Charlie E. Ulrich, N. P. Williams Co., N. D. (Seal.) Commission expires Apr. 13, 1921.

2 witnesses.

50¢ revenue stamps attached.

321 STATE OF NORTH DAKOTA.

County of Williams, ss:

The Williston Abstract & Guarantee Company has examined the records in the office of the Register of Deeds, Clerk of the District Court, Treasurer and Auditor of said County, also its books and records of Abstracts of Title to lands in said County and

Hereby certifies, That the within Abstract containing Fifteen notations, numbered from One to Fifteen, inclusive, is a correct abstract of all the instruments of record in the office of the Register of Deeds, affecting the title to the premises described in the caption thereof.

And further certified, That there are no judgments or Mechanics' liens against Philander Pollock, Philander Pollock, assignee, Nicholas W. Comford, Kingston & Kingston, R. H. Kingston, J. W. Kingston, J. L. Kingston, Mrs. Gertrude Ulrich, Eli Kingston and Charlie E. Ulrich, as shown by the records in the office of the Clerk of the District Court of Williams County, North Dakota, which are liens on said premises.

And further certifies, That there are no taxes due and unpaid, Tax Sales or forfeitures unredeemed, or unrecorded Tax Deeds af-

fecting the within described land, or unpaid Personal Property Taxes, which are a lien against the said premises.

In witness whereof, The said Williston Abstract & Guarantee Company has caused these presents to be signed by W. H. Westergaard, its Abstracter, and its official seal to be hereunto affixed, at Williston, North Dakota this 26th, day of July A. D. 1907 at 5.15 o'clock P. M.

[SEAL.] WILLISTON ABSTRACT & GUARANTEE COMPANY,

By W. H. WESTERGAARD,
Abstracter.

No. 897.

322 *Certificate of Continuation.*

The Westergaard-Blair Co., a corporation, of Williston, North Dakota hereby certifies that the within Abstract of Title has been continued from the 26th, day of July, 1907, at 5.15 o'clock P. M. (numbered from sixteen to seventeen inclusive) and that the said continuation contains all the instruments of record in the office of the Register of Deeds affecting the title to the premises therein described, since the day and hour above named.

And further certifies, that there are no Judgments or Mechanics' Lanes against said within described premises or against Charlie E. Ulrich, Eli Kingston, Spring Brook Trading Co., or notices of intention to file mechanics' liens, as shown by the records in the office of the Clerk of the District Court of Williams County, North Dakota, which are liens on said premises.

And further certifies, That there are no taxes due and unpaid, Tax Sales or forfeitures unredeemed; or unrecorded Tax Deeds affecting the within described land, or unpaid Personal Property Taxes, which are a lien against the said premises as appears of record.

In witness whereof, The said Westergaard-Blair Co., a corporation, has caused these presents to be signed by its Assistant Secretary, and its corporate seal to be hereunto affixed at Williston, North Dakota, this third day of May, A. D. 1915 at 11.37 o'clock A. M.

[SEAL.] WESTERGAARD-BLAIR CO.,

By L. A. GAUTHIER,
Asst. Secy.

No. 12879.

323

Ex. 4.

Spring Brook Trading Company,
Spring Brook, North Dakota.

GENTLEMEN:

You are hereby notified that Great Northern Railway Company is the owner of the following described premises situated at the station of Spring Brook, County of Williams, State of North Dakota, to-wit:

That portion of Lots 1, 2 and 3, Block 8, lying within and northwesterly of a line parallel with and distant 200 feet southeasterly from — measured at right angles to the center line of the main track of the railway of said Great Northern Railway Company as now located and constructed.

Great Northern Railway Company requires you to vacate, surrender and deliver up the possession of the said premises to it, and remove therefrom all buildings, structures and property belonging to you within thirty (30) days after the service of this notice upon you. In the event of your failure so to do, necessary steps will be taken to compel you to vacate said premises.

Dated May 1st, 1917.

GREAT NORTHERN RAILWAY COMPANY,
By JAMES F. MAHER,
Land Commissioner.

324

Ex. 5.

923,418.
"B."
J. A. P.

4-207.

Department of the Interior,
General Land Office.

Washington, D. C., May 20th, 1920.

I hereby certify that the annexed copies of papers, filed under Minot H. E. 4957, are true and literal exemplifications of the said papers on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

C. W. BRUCE,
*Assistant Commissioner of the
General Land Office.*

6-3451.

923,418-1.

(4-007.)

Application No. 4957.

Homestead.

Office Clerk District Court.

Williston, Williams Co., N. D., April 23d, 1900.

I, John Nelo, of Williston, Williams County, North Dakota, do hereby apply to enter, under Section 2289, Revised Statutes of the

United States, the E. 2 N. W. 4 and W. 2 N. E. 4 of Section 18, in Township 155 of Range 99, containing 160 acres.

JOHN NELO.

Land Office at Minot, N. D.

April 24, 1900.

I, Thomas E. Olsgard, Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

Rec'd by mail.

THOMAS E. OLSGARD,
Register.

326 [Endorsed:] (4-007.) No. 4957. Homestead Application. John Welo. Williston, N. D., April 24, 1900. Cancelled as relinquished by "C" Dec. 13, 1901, and 2nd, entry allowed. Cancellation noted. W. E. M. Section 18, Town 155, Range 99. 186-174. 923,418-2.

327

923,418-3.

4-063.

Homestead Affidavit.

Office Clerk District Court,

Williston, Williams County, N. D.

April 23d, 1900.

I, John Welo, of Williston, N. Dak., having filed my application No. 4957, for an entry under Section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am naturalized citizen of the United States, Single and over 21 years of age. Owing to great distance I could not appear at land office at Minot to make entrys; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly

made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws.

(Sign plainly with full christian name.)

JOHN WELO.

Sworn and subscribed before me this 23d day of April, 1900, at my office at Williston, in Williams County, North Dakota.

J. C. FIELD,
Clerk District Court, Williams Co., N. Dak.

*Here insert statement that affiant is a citizen of the United States or that he has filed his declaration of intention to become such, and that he is the head of a family, or is over twenty-one years of age, as the case may be. It should be stated whether applicant is native-born or not, and if not, a certified copy of his certificate of naturalization, or declaration of intention, as the case may be, must be furnished. (See page 45, circular of January 1, 1889.)

0-4.

328

923,418-5.

4-137.

Receiver's Receipt No. 4957.

Application No. 4957.

Homestead.

Receivers' Office.

Received of John Welo the sum of Fourteen dollars — cents; being the amount of fee and compensation of Register and Receiver for the entry of E. 2 N. W. 4 and W. 2 N. E. 4 of Section 18, in Township 155 N. of Range 99 W., under Section No. 2290, Revised Statutes of the United States.

ABNER L. HANSCOM.

\$14.00.

Receiver.

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also

the date of entry; An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

6-012.

[On left margin:] See note in red ink, which Registers and Receivers will read and explain thoroughly to person making application for lands where the affidavit is made before either of them.

[On right margin:] Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for no other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question whether the land is being cleared for legitimate purposes is a question of fact which is liable to be raised at any time. If the timber is cut and removed for any other purpose it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution, under Section 2461 of the Revised Statutes.

329

Ex. 6.

923,418-4.

4-621.

Minot, N. Dak., Dec. 24, 1900.

I hereby relinquish to the United States all my right, title, and claim in and to the land described in Receipt No. 4957, issued at Minot, N. D., April 24, 1900, being for the E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ N. $\frac{1}{2}$ N. E. $\frac{1}{4}$ of Section 20, Township 155 and Range 99.

JOHN WELO.

Witnesses:

JAMES JOHNSON.

Acknowledged before me this 24- day of Dec., 1900.

JAMES JOHNSON,

Notary Public, N. D.

0-1.

(Here follow maps, marked pages 330-335, inclusive, omitted in printing.)

336 I, J. H. Newton, Clerk of the Supreme Court, within and for the State of North Dakota, do hereby certify that the above and foregoing pages, numbered from one to three hundred and twenty-nine inclusive constitute a full, true and correct copy of all papers and documents filed in this court in the above-entitled action, with the exception of Exhibits A, B, C, and G, and Exhibit I, which last-mentioned Exhibits consist of certain plats, and true copies of which accompany this record.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Bismarck, N. D., this 30th day of July, 1921.

[Seal Supreme Court, State of North Dakota.]

J. H. NEWTON,
Clerk of Supreme Court, Bismarck, N. D.

Fees:

760 folios at 10c.....	\$76.00
Certificate and Seal.....	.50
	<hr/>
	\$76.50

337 Supreme Court of the United States, October Term, 1921.

No. 481.

GREAT NORTHERN RAILWAY COMPANY, Petitioner,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING BROOK STATE BANK, a Corporation; Henry Graichen, Christie Graichen, Emma L. Scharle, Verlie L. Scharle, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Spring Brook Trading Company, a Corporation; Daniel Jacobson, and Frank M. Craig, Respondents.

Stipulation Dispensing with Printing of Maps and Plats.

It is stipulated between the parties to the above entitled action, that the exhibits attached to and filed with the petition for writ of certiorari in the above entitled matter, consisting of maps and plats of right of way, station grounds, and town or city property, need not be reproduced in the printed record to be prepared by the Clerk of the Supreme Court; that the evidence in such case and the other exhibits, copies of which have been filed with the Clerk of the Supreme Court upon petition for writ of certiorari shall be printed as required by the rules of said court, and such record when so printed shall be sufficient and deemed in full compliance with the rules of said court. That in the further consideration of said matter in said court the copies of

maps and plats so on file as aforesaid may be referred to the same as though reproduced in the printed record.

Dated October 19, 1921.

THOS. F. CRAVEN,
CHAS. C. CONVERSE,
WM. G. OWENS,
Attorneys for Respondents.

M. L. COUNTRYMAN,
C. J. MURPHY,
T. A. TONER,
Attorneys for Petitioner.

338 [Endorsed:] File No. 28,436. Supreme Court U. S., October Term, 1921. Term No. 481. Great Northern Railway Co., Petitioner, vs. Vivian H. Steinke et al. Stipulation as to printing record. Filed October 29, 1914.

(4985)

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of North Dakota, Greeting:

Being informed that there is now pending before you a suit in which Great Northern Railway Company is appellant, and Vivian H. Steinke et al., are respondents, file No. 4112, which suit was removed into the said Supreme Court by virtue of an appeal from the District Court of Williams County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the nineteenth day of November, in the year of our Lord one thousand nine hundred and twenty-one.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,436. Supreme Court of the United States, October Term, 1921. No. 481. Great Northern Railway Company vs. Vivian H. Steinke et al. Writ of Certiorari. 4112. Filed in the Office of the Clerk of the Supreme Court, State of North Dakota, Dec. 12, 1921.

In the Supreme Court, State of North Dakota.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRINGBROOK STATE BANK, a Corporation; Henry Graichen, Christie Graichen, Emma L. Scharlte, Verlie L. Scharlte, Everett A. Webster, Martha Webster, Walter T. Webster, Addie M. Webster, Eli Kingston, Edna Kingston, Elizabeth Comford, Springbrook Trading Company, a Corporation; J. L. Kingston, Daniel Jacobson, Frank M. Craig, Nancy Craig, Charlie F. Bellet, Alice Bellet, Alva Ulrich, and Hattie Ulrich, Defendants.

Stipulation.

It is hereby stipulated between the parties to the above entitled action that the record already on file in the Supreme Court of the United States upon the application and petition of appellant above

named, for certiorari shall be taken and considered as a return to the writ of certiorari from the Supreme Court of the United States.

Dated this 28th day of November, 1921.

M. L. COUNTRYMAN,
C. J. MURPHY,
T. A. TONER,

Attorneys for Plaintiff.
THOS. F. CRAVEN,
CHAS. C. CONVERSE,
WM. G. OWENS,

Attorneys for Defendants.

In the Supreme Court, State of North Dakota.

I, J. H. Newton, Clerk of the Supreme Court, within and for the State of North Dakota, do hereby certify that the above and foregoing is a full, true and correct copy of stipulation filed in the above entitled action, on the 2nd day of December A. D. 1921, as the same remains on file in my said office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at Bismarck, this 2nd day of December A. D. 1921.

[Seal of Supreme Court, State of North Dakota.]

J. H. NEWTON,
Clerk Supreme Court.

[Endorsed:] File No. 28,436. Supreme Court U. S., October Term, 1921. Term No. 481. Great Northern Ry. Co., Petitioner, vs. Vivian H. Steinke et al. Writ of certiorari and return. Filed Dec. 5, 1921.

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JAMES D. ■

Supreme Court of the United States.

OCTOBER TERM, 1920.

No. —

GREAT NORTHERN RAILWAY COMPANY,
Petitioner,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING
BROOK STATE BANK, a corporation, HENRY
GRAICHEN, CHRISTIE GRAICHEN, EMMA L.
SCHARTLE, VERLIE L. SCHARTLE, EVERETT A.
WEBSTER, MARTHA WEBSTER, WALTER T. WEB-
STER, ADDIE M. WEBSTER, ELI KINGSTON, EDNA
KINGSTON, SPRING BROOK TRADING COMPANY, a
corporation, DANIEL JACOBSON, and FRANK M.
CRAIG,

Respondents.

PETITIONER'S BRIEF ON APPLICATION FOR WRIT OF CERTIORARI.

M. L. COUNTRYMAN,

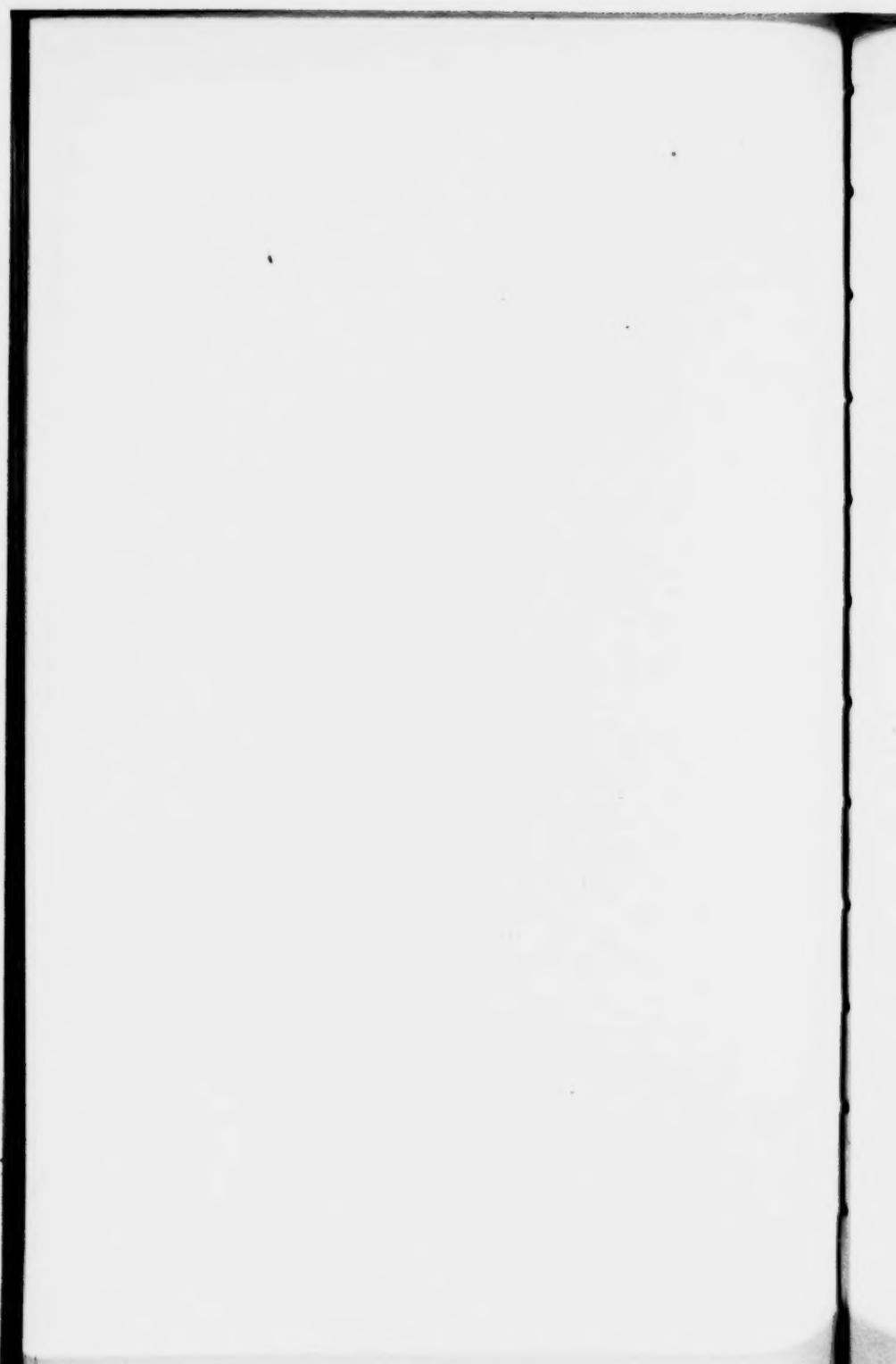
St. Paul, Minn.

C. J. MURPHY,

T. A. TONER,

Grand Forks, N. Dak.,

Attorneys for Petitioner.



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Supreme Court of the United States.

OCTOBER TERM, 1920.

No. —————

GREAT NORTHERN RAILWAY COMPANY,
Petitioner,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRING
BROOK STATE BANK, a corporation, HENRY
GRAICHEN, CHRISTIE GRAICHEN, EMMA L.
SCHARTLE, VERLIE L. SCHARTLE, EVERETT A.
WEBSTER, MARTHA WEBSTER, WALTER T. WEB-
STER, ADDIE M. WEBSTER, ELI KINGSTON, EDNA
KINGSTON, SPRING BROOK TRADING COMPANY, a
corporation, DANIEL JACOBSON, and FRANK M.
CRAIG,

Respondents.

PETITIONER'S BRIEF ON APPLICATION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

The Great Northern Railway Company brought an action in the District Court of Williams county,

North Dakota, to determine the title to station grounds at Spring Brook station. The grounds are 200 feet in width, paralleling the main track of the railway within the northwest quarter of the northeast quarter of section 18, township 155, range 99. In that action it was claimed that the respondents were in possession of certain portions of the station grounds and were trespassers. The respondents answered alleging that they are the owners of the portions of the grounds occupied by them, had been in possession thereof for a great length of time, had made valuable improvements thereon, and denied that the railway company ever acquired title. They also pleaded as a defense the statute of limitations and laches.

The railway company rests its claim to title upon the Act of Congress of March 3, 1873. The St. Paul, Minneapolis & Manitoba Railway Company, the predecessor in interest of the Great Northern Railway Company, filed upon the land in question as station grounds under the provisions of the Act referred to.

The defendants are successors in interest of one Philander Pollock who obtained a patent to the northwest quarter of the northeast quarter of said section 18 without any reservation of these station grounds under scrip filed by him.

When the railway company filed its map of definite location originally it made claim for station grounds in sections 4 and 5, township 155, range 99. This filing was made September 3, 1898, and

was approved by the Secretary of the Interior on July 10, 1899. On January 12, 1900, a new map claiming the station grounds in controversy was filed in the local land office at Minot, North Dakota.

On July 18, 1900, the map of the new station grounds had been amended in some minor particulars and was endorsed by the officers of the local land office at Minot as follows: "U. S. Land office, Minot, N. D. Received and refiled July 18, 1900, at 9 A. M." Claim for new station grounds was approved by the Secretary of the Interior on October 18, 1900, subject to all existing rights.

On April 24, 1900, one John Welo made a homestead entry of the northwest quarter of the northeast quarter of section 18, which he held until May 31, 1901, when he relinquished the same. Pollock made homestead entry of the land last described on August 19, 1902, which he relinquished June 1, 1903, and on the date of relinquishment made a filing under scrip. Receiver's receipt was issued to him October 31, 1905, and patent February 28, 1906.

Both the trial and Supreme Courts of the state decided the case against the railway company. The opinion of the Supreme Court states, in substance, that the defendants purchased from Pollock without any notice of the claim of the railway company, basing its contention as to lack of notice upon the fact that the railway company did not file notice in the office of the register of deeds

of Williams county tending to show that it claimed any portion of these station grounds. That the defendants since the date of their purchase have been in the open and adverse possession of the portions of the lands claimed by them, and have placed valuable improvements thereon. That the railway company acquired no rights except such as the Secretary of the Interior purported to grant. That the plat under which the railway company claims was presented to the local land officers on July 18, 1900, who endorsed thereon that the property in question was not vacant; in other words, as the Supreme Court views it, that the land was no longer subject to the Act of 1875. That the Secretary of the Interior approved the application for new station grounds only insofar as the lands claimed by the railway company were subject to disposal by him and that the land in question was not subject to such disposal because of the existence of the Welo entry. That he did not approve and had no intention of approving the application for station grounds on the tracts of land which the endorsement of the officers of the land office showed were not vacant. The language of the secretary relied upon is as follows: "Approved subject to all valid existing rights." That the map of these new station grounds which was filed January 12, 1900, and at a time when there was no adverse entry or claim to the land of any kind, had been withdrawn and abandoned by the railway company. The basis of this presumption is the endorsement appearing thereon as follows:

"U. S. Land office, Minot, N. D. Received and refiled July 18, 1900."

We interpret the decision of the Supreme Court as holding that as a matter of law there was a withdrawal and abandonment of the claim for new station grounds filed by the railway company on January 12, 1900. That at the time of the re-filing of plat of new station grounds on July 18, 1900, John Welo's homestead filing had been made, and because of the existence of the Welo entry the land was not subject to appropriation by the railroad company under the Act of 1875. That the subsequent abandonment of Welo is immaterial, and when he made his abandonment the land reverted to and again became a part of the public domain, subject to acquisition by Pollock or any other person who might select it. That in any event because of the adverse possession of defendants and laches of the railway company the title of the defendants has become perfect.

These are the contentions advanced by the defendants in the court below. In addition thereto they took the ground that the original selection of station grounds in sections 4 and 5 exhausted the rights of the railway company so far as station grounds within this particular ten-mile limit are concerned.

ARGUMENT AND AUTHORITIES.

Petitioner contends:

1. That the railway company had the right to change the location of its station grounds and select new grounds in lieu of those originally selected.
2. That the department of the Interior so decided, and such decision cannot be collaterally attacked in this case.
3. That the filing for new station grounds made on January 12, 1900, at a time when no entry of any kind had been made upon the land, is the one that was finally approved by the Interior Department on October 18, 1900, even though the filing had been amended in the particulars shown by the record. That the refiling marks do not establish a withdrawal or abandonment of the claim as made on January 12, 1900, and the allowance by the department on October 18, 1900, establishes that there was nothing to obstruct the granting of the station grounds. That upon such approval the title related back to the date of the filing and was superior to the intervening claim of Welo under his homestead entry of April 24, 1900.

4. That even though the selection of January 12, 1900, was premature and ineffective, nevertheless the refiling of the amended plat made July 18, 1900, was valid and vested title to the grounds claimed subject only to the possessory right of Welo under his homestead entry. In other words, the act of 1875 authorizes the selection of railroad right of way and station grounds upon lands the legal ownership of which still remains in the United States even though they may have been entered by settlers under the homestead or pre-emption laws. That in such case the law contemplates that settlement shall be made with the settler for the value of his interest in the land that is appropriated, or that the interest of the settler shall be condemned. That in this case the title of the railway company became absolute and perfect when Welo abandoned his entry; and such title remained perfect during the period of almost a year after Welo's abandonment and before Pollock's entry.

5. Defendants could not acquire title by limitation and adverse possession.

POINTS I AND II.

The railway company had the right to change the location of the station grounds:

The selection of right of way and station grounds is governed by the same provisions of the Act of March 3, 1875. It has been a very common practice for the Department of the Interior to permit changes in right of way, and the courts have repeatedly, and we believe in all cases, recognized the action of the department as valid and binding. We believe the same practice has prevailed as to station grounds, and such practice was certainly followed in this case. We have found no contested court decision, however, relating to station grounds.

In the case of Taggart v. Great Northern Ry. Co., 211 Fed. 288, (C. C. A. 9th Circuit) it appeared that a revised survey and new location of right of way had been approved by the Secretary of the Interior, and the court did not question the validity of the action taken. The Interior Department issued a general circular on May 21, 1909, section 19 of which refers to changes in the original location of railroads, and provides for the filing of a new plat, etc. For this circular see page 290 of the above case.

In the case of Phoenix & E. R. Co. v. Arizona & Eastern R. Co., 84 Pac. 1097, the Supreme Court

of Arizona held that "a company seeking to avail itself of the benefits of this act of Congress (March 3, 1875) *may change the location of its road* after the approval of its profile, with due regard for intervening rights. This has not only been the adopted practice of the Interior Department, provided for by rules and forms to be followed by the company seeking to change its location, but has been recognized by the Supreme Court of the United States," citing *Washington & L. Ry. Co. v. Coeur d'Alene Ry. Co.*, 160 U. S. 77, 99.

In the case cited in 160 U. S. 77, the contention was made that when a railroad company files a map of definite location which is approved by the Secretary of the Interior, "the company had secured the benefit of the act upon the line there shown and could not thereafter alter the same" (Page 97 report). This contention was rejected. This court held that so far as the United States is concerned, "There is nothing in the act forbidding a railroad company, having adopted one line of survey along the route provided for in its articles of incorporation, and having filed a plat thereof, to subsequently and within the time allowed it by law for so doing, adopt another route." The court further said that if the United States did not complain *there* was no foundation for the plaintiff to do so, as the filing of the new map of definite location was not done to deceive the plaintiff or anyone else, and plaintiff was not misled because of such new filing.

The same observations apply to the defendants in the case below, and to Pollock, under whom they claim, who did not enter this land for more than two years after the map of the new station grounds had been filed in the local land office at Minot, and a year and ten months after the new selection had been approved by the Secretary of the Interior.

There is no reason why the rule permitting the change of location of right of way should not be applied to station grounds. The selection for either purpose is under the same provisions of the Act. Exigencies may arise after the selection and filing of map of definite location of either right of way or station grounds requiring that a change shall be made. Errors of judgment frequently occur in matters of this kind the same as in other business. Recognizing this the department has made rules and regulations providing for changes in selection, and the courts recognize the expediency and binding force of such rules. The decision of the department in granting the claim for the station grounds involved in this litigation cannot be collaterally attacked.

Noble v. Railroad, 147 U. S. 165.

POINT III.

The filing of plat of new station grounds made Jan. 12, 1900, was never withdrawn or claim thereunder abandoned. The record shows simply that it was amended. The approval of Oct. 18, 1900, relates back to the inception of the claim and not to the date of re-filing after the amendment had been made.

The reasons for the amendment and re-filing of the plat of the new station grounds are set forth in the petition for writ, subdivision 9. It appears that the department required that minor amendments of the plat be made, and relinquishment of the station grounds that had already been approved be filed. These requirements were complied with and the approval of the department as to the new station grounds was entered in due course. These reasons do not appear in the record in this case, but do appear by the records of the Interior Department, if the court sees fit to take notice of such records.

However, should the court refuse to take notice of these outside matters, nevertheless we contend that the record as it stands establishes that the claim for new station grounds that was approved October 18, 1900, is the same claim that was first filed January 12, 1900, and amended and refiled July 18, 1900. That the inferences drawn by the

court below from the filing marks made by the Land Officers at Minot are not justified.

Examination of the plat and claim for new station grounds filed January 12, 1900, and amended plat and claim filed July 18, 1900, will show that they are identical, except that the amended claim connects the station grounds with the public survey. The case may be likened to that of an amended complaint in an action at law. The action does not run from the time of the making or filing of the amended complaint, but from the time the original complaint was made. The amended pleading may supply omissions of the original complaint and correct errors of a material character. Yet it could not be claimed that the action dates from the time of the amended complaint. And it would be immaterial that the clerk of court might endorse on the amended complaint when filed in his office the words "Received and refiled." Those doing business with public officials have no control over ministerial acts performed by them, and are not prejudiced by errors or irregularities that may be committed by such officers.

The filing of claim for new station grounds on January 12, 1900, was the initiatory step or act, and the approval made the following October related back to the first filing, cutting off all intervening claims.

This is the general rule. It was followed in the case of *Shepley, et al. v. Cowan, et al.*, 91 U. S. 330. In that case the plaintiffs claimed under convey-

ance from the state. The state based its title upon a grant made to it under an Act of Congress. Defendants claimed as successor in interest to a patentee under the pre-emption laws. The defendants prevailed because the initiation of the pre-emption claim preceded any action on the part of the state.

It was also held that the action of the local land officers in refusing to accept proof under the pre-emption did not affect the rights of the pre-emptor.

The same rule was followed in

Weyerhauser v. Hoyt, 219 U. S. 381;

Stalker v. O. S. L. Ry., 225 U. S. 142;

Taggart v. Great Northern, *supra*.

In the case of *Stalker v. O. S. L. Co.*, *supra*, station grounds were involved. It was claimed that the provisions of section 4 of the Act of March 3, 1875, applied only to right of way, and not station grounds. The court held otherwise. It was also held that a pre-emption filed after the filing of the map of station grounds, but before approval thereof by the secretary, was of no validity as against the claim of the railroad company for station grounds.

In the court below defendants contended that the entryman had no notice of the claim of the railway company to these station grounds. The case last referred to effectually disposes of this contention. After quoting the regulations of the Interior Department as to the record of the filing of claim for station grounds and of the approval

to be made in the local land office, and requiring certificates of the disposal of lands issued by officers of local land offices to show the same subject to the claim for station grounds, the court held that failure of land officers to perform their duty in this regard did not prejudice the title of the railway company. There, as in the case at bar, the entryman received a clear certificate or patent.

* The court made it plain that inasmuch as the railroad did everything which the law required it to do, failure of the public officials to perform their duty did not affect the railroad.

In the case at bar, the defendants rely upon certain notations of the land department, that the grant of station grounds is subject to existing rights, and the fact that clear patent was issued Pollock. These facts are immaterial under the Stalker case.

POINT IV.

Even though the initiation of claim for new station grounds dates from July 18, 1900, when the amendment and refiling in the local land office were made, nevertheless the company acquired good title. The law authorized the granting of station grounds, subject to the rights of Welo, the entryman. When his rights lapsed the absolute title rested in the railroad company.

Counsel for defendants contended in the court below that upon the filing of homestead entry by Welo on April 24, 1900, the land could no longer be claimed for railroad right of way and station grounds under the Act of 1875. The cases of Whitney v. Taylor, 158 U. S. 85; Kansas, etc., v. Dunmeyer, 113 U. S. 629, and several decisions of the land department were cited in support of this proposition. It was argued that upon a homestead entry being made the land covered thereby ceases to be a part of the public domain, and the filing of the claim for right of way and station grounds is a nullity. That if the homestead entry be abandoned later the land reverts to the public domain and becomes subject to entry anew, but is not affected by the claim for right of way already filed.

The decisions relied upon are not in point. They have to do with Land Grant lands, so-called under Acts of Congress which in each instance, expressly

limit the grant to lands *to which a pre-emption or homestead claim may not have attached, or whenever the United States has full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims.*

No analogy exists between these various land grant acts and the Act of March 3, 1875. In the land grant acts it was intended to safeguard the rights of the settler and entryman, and to except from the various grants, any and all lands to which possessory rights may have attached. The purpose of Congress to do this is expressly stated in each and all of the several grants of lands in aid of railroads, and it therefore would be difficult to conceive of any different reasoning than is to be found in the unbroken line of decisions by the United States Supreme Court, followed by other federal and state courts.

On the other hand, there is in the Act of March 3, 1875, a clear intent that the grant shall extend to all lands of the United States, whether inchoate or possessory rights therein shall have attached or not.

By Section 5 of the Act, it is provided that the grant shall not apply to lands "within the limits of any military park or Indian reservation, or to lands specifically reserved from sale." Manifestly, had it been the intent of Congress to exclude from the grant lands, to which the inchoate or possessory rights of the entryman or settler had attached, it would have so provided as it universally did provide in the land grant acts in aid of railroads.

Further, the purpose of Congress that the provisions of the Act should extend to settled or entered lands is clearly apparent in Section 3 of the Act, which provides that: "The legislature of any proper territory may provide for the manner in which private lands or *possessory claims on the public lands of the United States may be condemned.*" It further provides that in the absence of such territorial enactment, the railroads may condemn under the Act of July 1, 1862, amended July 2, 1864, being an act providing for construction of a railroad from the Missouri River to the Pacific Ocean.

Again, the intent of Congress is further manifested by Section 2288, Revised Statutes, which provides that an entryman or settler may transfer by warranty against his own acts, any portion of his homestead or pre-emption for church, cemetery or school purposes, *or for right of way of railroad* across such homestead or pre-emption.

The intent of Congress in the Act of March 3, 1875, was to provide means of extinguishing the homesteader's rights; and it enacted that the proposed right might be condemned. At that time under the homestead law, a conveyance by the entryman of any right in the land, operated, ipso facto, as a forfeiture of all his rights. He might not voluntarily dispose of any of his rights, but Congress provided that he might be involuntarily divested of them, and remunerated therefor through the exercise of condemnation by the railroad. Con-

cededly, it was found that extinguishment of the settler's or homesteader's rights in favor of certain public needs, might be more economically and expeditiously accomplished if the entryman or settler were given the right to voluntarily dispose of them. Congress, therefore, amended the homestead law by enactment of section 2288, which relieved the entryman or settler from the penalty of forfeiture because of conveyance of his rights for certain stated purposes.

The distinction between the so-called land grant laws and the Act of March 3, 1875, is clearly defined in the cases of

Hamilton v. Ry. Co., 28 Pae. 408;
Railroad Company v. Baldwin, 103 U. S. 426;
Railroad Co. v. U. S., 92 U. S. 733;
Railroad Co. v. Alling, 99 U. S. 475;
Railroad Co. v. Levis, 41 Cal. 492;
Doran v. Ry. Co., 41 Cal. 259;
Bybee v. Ry. Co., 26 Fed. 589;
Alexander v. Kansas City, 40 S. W. 104.

In the case of Bybee v. Ry. Co., *supra*, the court said:

"The grant of a right of way is a separate and distinct matter from that of the lands to aid in the construction of a road. * * * The grant of the right of way is without condition except that which the law tacitly annexes to all such easements—the liability to be lost or forfeited for non-user, ascertained and determined in a judicial proceeding insti-

tuted by the Government for that purpose; but it is also a present absolute grant, and takes effect when the line of the road is located, from the date of the act as against any intervening claim or settlement whatever."

The case of *Alexander v. Kansas City*, *supra*, is peculiarly in point, and the reasoning seems unanswerable. We quote the following language:

"The United States retained legal title to this land, subject to the right of Simpson to obtain the title thereto by complying with the homestead law. *By the act of Congress of March 3, 1875, the congress granted to defendant a right of way through any lands belonging to the United States*, upon filing the articles of incorporation and map of definite location, and having the same approved, but congress had in view the peculiar circumstances of this case. *It considered that it might occur that some settler might have entered upon some tract through which this railroad was projected, and might not have perfected his title under the homestead law*. With a view to the protection of his inchoate right, it permitted him to grant a right of way to such railroad company, while withholding that privilege as to any other grantee of such homestead. *Rev. St. U. S. 1878, Sec. 2288*. Or, if such homesteader refused to agree upon compensation for a right of way, the Act of 1875 allowed a condemnation of his interest. *Act March 3, 1875, Section 3*. The defendant company acquired a right of way of Simpson, entered and built its road; but Simpson never perfected his title to the homestead and never obtained his patent, but abandoned the land. * * *

What now was the position of the defendant? When it sought to obtain its right of way, it was precluded from describing this land as vacant, because of the possession of Simpson, a homesteader with an inchoate right. It was directed by the government to deal with this homestead tenant for a right of way through his equitable estate. This it did and purchased a right through the inchoate homestead. Is it to be told now, when the homestead tenant's right fails, that the act of congress did not operate to grant the right of way over this land to which the United States held the title, and the title to which never passed out of the government? We think not. *We think that the United States, by the act of March 3, 1875, must be held to have donated all its interest in the right of way upon the approval of the articles of incorporation and map of definite location, subject to the contingency of the homestead tenant perfecting his title; and, if he failed to do so, immediately upon his abandonment a perfect title accrued to the railway company, as against the United States, and as against any person who had not then a possessory right thereto.*"

The italics are ours.

The case of *Bonner v. Rio Grande*, 72 Pac. 1065, is in point. There a mining claim was located prior to the location of the railroad. The railroad company filed a map of definite location through this mining claim while the claim still remained intact, procured from the locator a deed covering the right of way and constructed its railroad.

This mining claim was abandoned and another under which plaintiff claimed was made. It was held that upon the abandonment of the first mining location the right of way attached and that the new mining location was subject thereto. After referring to the decisions of the Supreme Court of the United States under the acts of Congress granting public lands in aid of the building of railroads the court clearly distinguishes the Act of 1875, saying:

"But in these cases the statute granting subsidy lands was construed as expressly excluding from the operation of the grant land to which a claim had been initiated in the land office. *The act of Congress under consideration will not, we think, bear such construction.*"

In the case of *Hamilton v. Spokane Ry. Co.*, 28 Pac. 408, the same holding was made, although in that case pre-emption entries were involved.

These state court decisions follow the rule established by this court. In *Railroad Co. v. Baldwin*, 103 U. S. 426, the Act of July 23, 1866, granting lands to aid in the construction of a railroad and also granting right of way over lands of the United States was involved. The grant in aid of railroads contained the usual exceptions in favor of entrymen and settlers. The provision as to right of way contained no exceptions. The court held that settlers took subject to the right of way granted by this act. The law under consideration in the case

at bar protects settlers and entrymen to the extent of requiring that they shall be paid for their interest or such interest shall be condemned. Aside from this requirement the law involved in the Baldwin case and the Act of 1875 are essentially the same. The following portion of the opinion in the Baldwin case is pertinent:

"But the grant of the right of way by the sixth section contains no reservations or exceptions. It is a present absolute grant, subject to no conditions except those necessarily implied, such as that the road shall be constructed and used for the purposes designed. Nor is there anything in the policy of the government with respect to the public lands which would call for any qualification of the terms. Those lands would not be the less valuable for settlement by a road running through them. On the contrary, their value would be greatly enhanced thereby.

The right of way for the whole distance of the proposed route was a very important part of the aid given. If the company could be compelled to purchase its way over any section that might be occupied in advance of its location, very serious obstacles would be often imposed to the progress of the road. For any loss of lands by settlement or reservation, other lands are given; but for the loss of the right of way by these means, no compensation is provided, nor could any be given by the substitution of another route.

The uncertainty as to the ultimate location of the line of the road is recognized throughout the act, and where any qualification is intended in the operation of the grant of lands,

from this circumstance, it is designated. Had a similar qualification upon the absolute grant of the right of way been intended, it can hardly be doubted that it would have been expressed. The fact that none is expressed is conclusive that none exists.

We see no reason, therefore, for not giving to the words of present grant with respect to the right of way the same construction which we should be compelled to give, according to our repeated decisions, to the grant of lands had no limitation been expressed. We are of opinion, therefore, that all persons acquiring any portion of the public lands, after the passage of the act in question, took the same subject to the right of way conferred by it for the proposed road."

That one who makes entry of public lands under the homestead or pre-emption laws has merely possessory rights, the acquisition of which is provided for in the Act of 1875, seems to us clear. A homestead entry authorizes the entryman to possess or reside upon the land. This right remains possessory and nothing more until compliance with the law as to improvement, residence, etc., has been made and proof made and accepted.

In the case of U. S. v. Waddell, 112 U. S. 76, the Court said: "By the original entry he (the entryman) acquired the inchoate but well-defined right to the land and its possession." That the entryman "is authorized to reside" on the land.

The following cases also seem in point:

Washington, etc., Osborne, 160 U. S. 103;

Spokane, etc., v. Ziegler, 167 U. S. 65;

Butz v. N. P. Ry. Co., 119 U. S. 65.

Again, we believe that sound reason and authority justify us in taking the position that when Welo's entry was abandoned the filing for new station grounds made on October 18, 1900, became effective, and no new claim for such station grounds was necessary. This ante-dated Pollock's entry about 15 months.

In the case of Bonner v. Rio Grande, 72 Pac. 1065, it was held that upon the abandonment of the first mining location the right of the railway company to right of way at once attached. That "the company was not required to refile its map to acquire the right of way." That upon the abandonment of the first mining claim the land became public land, *and as such burdened with the right of way of the railroad company*, and that the subsequent location was subject to such right of way.

The case of Taggart v. Great Northern, 211 Fed. 288, holds, inferentially, to the same principle. There an amended plat of right of way was recognized and accepted although the original had been approved and remained intact. The controversy arose over certain right of way included in the original claim, which original claim has been relinquished *after the amended claim had been filed*. The relinquishment excepted and excluded such

portions of the old right of way as were included in the limits of the new. The court sustained the claim of the railway company as to the portions of right of way under the original filing, and held that the relinquishment did not cover the same. This case is referred to as establishing that the practice of allowing a new or amended filing while a prior one remains upon the record has been followed and impliedly approved.

In Wash. & Idaho Ry. Co. v. Coeur d'Alene Ry. Co., 160 U. S. 97, it was held that so far as the United States is concerned the Act of 1875 does not forbid a railway company, that has adopted one line of survey along the route provided for in the articles of incorporation, and has filed a plat thereof, to subsequently adopt another route. That in such case no new map need be filed. That the construction of the road over the new route would preclude the company from asserting any claim to the right of way covered by the original selection. It was claimed that when the original map of right of way was approved by the Department of the Interior, title vested and the company had secured the benefit of the Act, and could not thereafter alter the location without the consent of the government.

This case bears out our contention that the filing of a claim for right of way and approval thereof do not exhaust the rights of a railroad company. That such location may subsequently be changed. That appropriation of right of way over a different route to that shown by the plat that has been

filed and approved will be accepted in lieu of technical compliance with the law as to filing plats of the route.

Upon the principle that effect will be given to substance regardless of the forms or procedure followed, this case, we believe, sustains our claim that after the abandonment of the Welo homestead effect will be given to the amended claim for station grounds made by the railroad company and which was ~~then~~ spread upon the records of the local land office and in the Interior Department, without requiring the railroad company to file the same claim over again.

POINT V.

Adverse Possession and Laches:

Title to right of way and station grounds granted by act of Congress cannot be lost or divested by adverse possession or laches.

Kindred v. U. P. R. R. Co., 168 Fed. 648.

N. P. v. Smith, 171 U. S. 260.

N. P. v. Townsend, 190 U. S. 267.

N. P. v. Ely, 197 U. S. 1.

U. P. v. Kanges, 169 Fed. 465.

This rule has been followed by an unbroken line of decisions down to the present time. But so far as the claim to title under the statute of limitations is concerned, the evidence fails to show that any of the defendants come within either the 20-year statute or the 10-year statute. And, evidently recognizing this, the Supreme Court of the state did not refer to the statutes of limitation, but says that the defendants are entitled to protection because of the laches of the railway company in asserting its claim to the property in dispute. The cases cited dispose of the question of laches against the view entertained by the court below.

It is respectfully submitted that the writ of certiorari petitioned for should be granted.

M. L. COUNTRYMAN,

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C. J. MURPHY,

T. A. TONER,

Grand Forks, N. Dak.,

Attorneys for Petitioner.

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FILED

No. 481

AUG 17 1921

JAMES D. MARSHALL

Supreme Court of the United States.

October Term, 1920.

GREAT NORTHERN RAILWAY COMPANY,

Petitioner,

vs.

VIVIAN H. STEINKE, PAUL E. STEINKE, SPRINGBROOK STATE BANK, HENRY GRAICHEN, CHRISTIE GRAICHEN, EMMA L. SCHARTLE, VERLIE L. SCHARTLE, EVERETT A. WEBSTER, MARTHA WEBSTER, WALTER T. WEBSTER, ADDIE M. WEBSTER, ELI KINGSTON, EDNA KINGSTON, SPRINGBROOK TRADING COMPANY, DANIEL JACOBSON, and FRANK M. CRAIG,

Respondents.

PETITION FOR WRIT OF CERTIORARI
REQUIRING THE SUPREME COURT OF
NORTH DAKOTA TO CERTIFY TO THE SUPREME COURT OF THE UNITED STATES,
FOR ITS REVIEW AND DETERMINATION,
THE ABOVE ENTITLED CASE.

M. L. COUNTRYMAN,

Attorney for Petitioner,

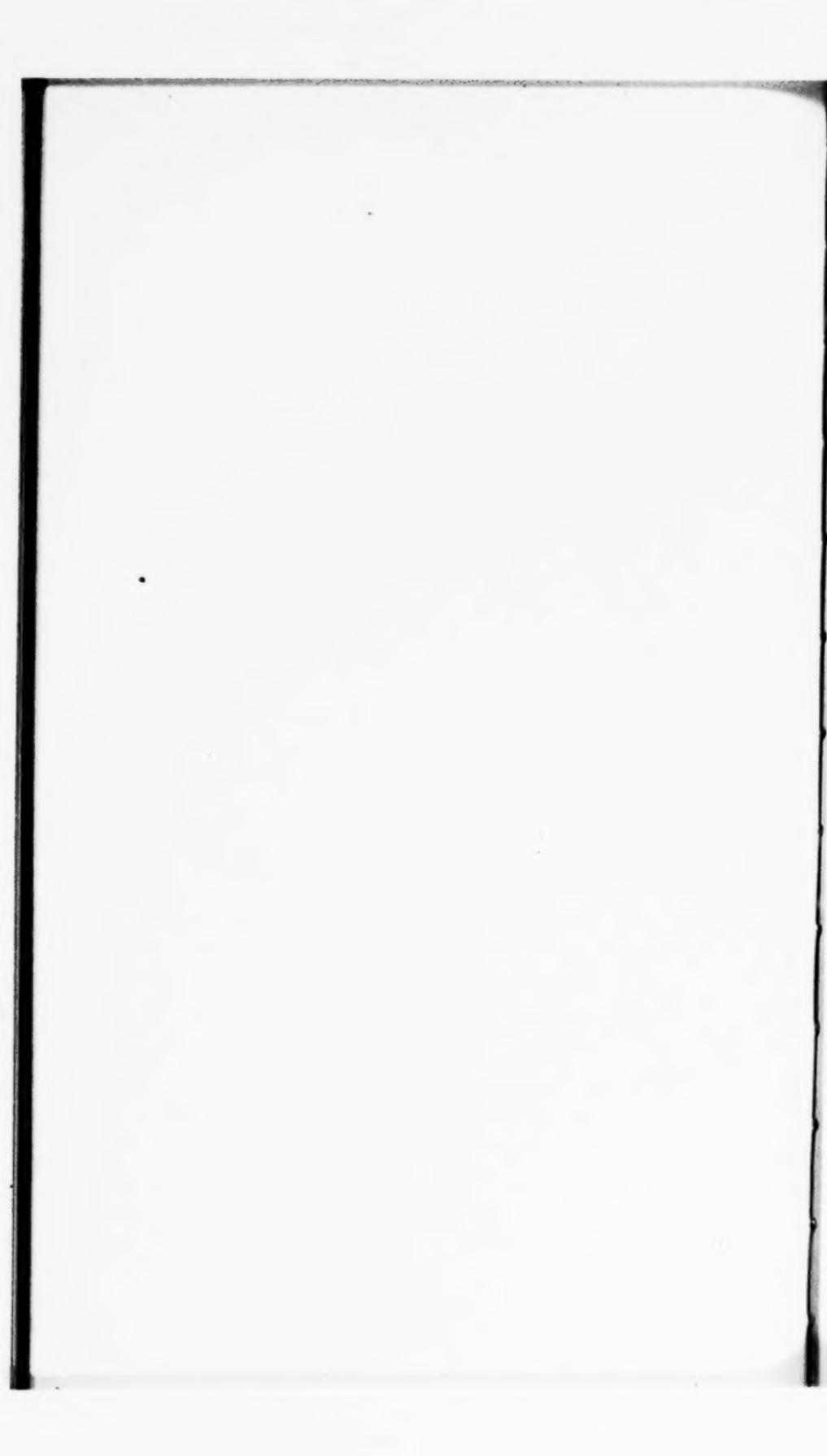
St. Paul, Minnesota.

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To the Honorable Supreme Court of the United States:

The Great Northern Railway Company respectfully shows to this honorable court as follows:

This case involves the title to certain real property at Spring Brook, a station on the line of petitioner in Williams County, North Dakota. The property is claimed by petitioner as station grounds under the Land Grant Act of Congress of March 3rd, 1875, and by the respondents as grantees and successors in interest to one Pollock who obtained a patent under certain scrip filed by him.

The case was tried in the District Court of Williams County, and judgment rendered in favor of respondents on October 7, 1920, sustaining their title to the property. On appeal the judgment of the District Court was affirmed by order and judgment of the Supreme Court of North Dakota entered May 28, 1921.

1. In 1880 the St. Paul, Minneapolis & Manitoba Railway Company, the predecessor in interest of the plaintiff in the trial court, was a common carrier of freight and passengers and it was such a railroad corporation, and had furnished and filed such papers and proofs with the Secretary of the Interior and the United States Land Office as entitled it to claim grants of right of way and station grounds, etc., under the Act of Congress of March 3rd, 1875, from the United States, anywhere in the United States where its lines of road had been permanently located, and where there were public lands of the United States.

2. Thereafter said railway company made claim under said Act for a right of way proper, and ac-

quired such right of way and later made claim for station grounds in Sections 4 and 5, township 155, range 99, and established station facilities thereon. Three months thereafter these station grounds were abandoned. Shortly after this another claim was made for station grounds in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, township 155, range 99, and other lands (which was in the same 10-mile section of the road in which the old station grounds had been claimed) the station grounds first claimed being then relinquished and such last claim for station grounds was approved by the Secretary of the Interior.

3. During the time the last station ground plats were being put in proper form and after the plat thereof had been filed with the local land office at Minot, N. D., one John Welo made homestead entry on the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of section 18, township 155, range 99, and other lands not involved here, and approximately one year thereafter such entry was cancelled by relinquishment.

4. About a year thereafter one Philander Pollock filed homestead entry on the NW $\frac{1}{4}$ NE $\frac{1}{4}$ section 18, township 155, range 99, and other lands not here involved and two years thereafter such entry was cancelled by relinquishment, and immediately thereafter Pollock filed scrip on the NW $\frac{1}{4}$ NE $\frac{1}{4}$ section 18, township 155, range 99. Patent was issued to Pollock covering said tract in 1906.

5. In 1907 the St. Paul, Minneapolis & Manitoba Railway Company, by deed conveyed all its right, title and interest in and to the original right of way and said station grounds to the Great Northern Railway Company, the plaintiff in this action. The defendants in this action are grantees of Philander Pollock, and make their claim to title through and under him.

6. This action is a statutory action to quiet title in the nature of ejectment, brought by plaintiff against the defendants to determine the title and right to possession of portions of the station grounds hereinbefore mentioned, and the court erroneously, as we contend, held that Pollock and his grantees acquired a title under the patent issued in 1906, superior to the title of the predecessor in interest of the plaintiff under its approved claim and plat for substituted station grounds.

7. In chronological order the material facts upon which this controversy depends, happened as follows:

May, 1887. The line of railroad of the predecessor in interest of the plaintiff was completed over the land in question to-wit: the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of section 18, township 155, range 99, then unsurveyed. The Secretary of the Interior had previously approved the Railway Company's application. (Date not definite in record).

Sept. 3, 1898. The map of definite location of the predecessor in interest of plaintiff was filed

with a plat of station grounds in sections 4 and 5, township 155, range 99 (Old station grounds).

Dec. 1898. Old station grounds abandoned. (Date not definite in record).

July 10, 1899. Definite location map of Sept. 3, 1898, was approved by the Secretary of the Interior.

Jan. 12, 1900. The predecessor in interest of the plaintiff filed in the local land office at Minot, N. D., plat of the *new station grounds* in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ section 18, township 155, range 99, and other lands not involved here.

April 24, 1900. John Welo made homestead entry for the NW $\frac{1}{4}$ NE $\frac{1}{4}$ section 18, township 155, range 99, and other lands.

July 18, 1900. The plat for *new station grounds* filed Jan. 12, 1900, was in the local land office and had been by the officials thereof endorsed "Received and refiled," and appended thereto there was a statement that all lands were vacant except the W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 18, this being the land upon which John Welo had a filing.

Oct. 18, 1900. Plat of the *Old Station grounds* was cancelled and relinquished. (Date not in record, except that new station grounds plat then approved).

Oct. 18, 1900. Plat of the new station grounds was approved by the Secretary of the Interior "subject to all valid existing rights."

May 31, 1901. John Welo relinquished his entry in toto.

Aug. 19, 1902. Philander Pollock entered the NW $\frac{1}{4}$ NE $\frac{1}{4}$ section 18, township 155, range 99, and other lands not involved here.

June 1, 1903. Pollock relinquished his entry.

June 1, 1903. Pollock filed scrip on the NW $\frac{1}{4}$ -NE $\frac{1}{4}$ section 18, township 155, range 99. (Date does not appear in record, and fact only by recital in patent).

Oct. 31, 1905. Pollock's scrip was approved and shortly thereafter receiver's receipt was issued and recorded. (Not in record).

Feb. 28, 1906. Patent issued to Pollock by virtue of his scrip entry covering the NW $\frac{1}{4}$ NE $\frac{1}{4}$ section 18, township 155, range 99.

8. The decision of the Supreme Court of North Dakota, construing the Act of Congress of March 3, 1875, and the General Land laws of the United States, is that the title acquired by Pollock under his patent in 1906, as passed on to his grantees, the respondents, is superior to the title of the plaintiff acquired from the St. Paul, Minneapolis & Manitoba Railway Company, and acquired by the latter company under the act of 1875 by virtue of its approved plat filed in the local land office at Minot, N. D., on January 12, 1900, notwithstanding repeated decisions of this court construing said acts, which we believe would lead to a directly opposite conclusion.

9. The conclusion of the North Dakota Supreme Court is based upon the premise that the

filling on the new station grounds made January 12, 1900, was withdrawn by the railway company and another filing made July 18, 1900. The court inferred that there had been such withdrawal because of the endorsement on the plat as follows: "U. S. Land Office, Minot, N. D. Received and refiled July 18, 1900 at 9 A.M." All that the record in this case shows is that the physical plat constituting the claim for station grounds of the predecessor in interest of plaintiff was filed January 12, 1900, bears the re-filing marks above indicated, and was approved October 18, 1900. We contend that the inference as to withdrawal of claim for station grounds filed January 12, 1900, is without justification. It appearing that the railway company filed its claim for new station grounds on January 12, 1900, there can be no presumption, in the absence of affirmative evidence, and simply from re-filing marks made by Land Office officials, that the claim was withdrawn. The original filing marks have as much weight as the re-filing marks, and, as the record now stands, it should be presumed that the application remained before the Land Department from the filing thereof in January, 1900, until approved in October, 1900.

While the record in this case is silent, it might not be improper to state the facts as they are shown by the records of the General Land Office. They establish that the railway company made no withdrawal of claim, but merely complied with the request of the Land Department to make cer-

tain minor amendments. The approval of the Secretary of the Interior on October 18, 1900, was of the claim for station grounds made January 12, 1900 as "amended" under the express direction of the Interior Department. The claim and plat for station grounds filed in the local land office January 12, 1900, was duly forwarded to the general land office at Washington, D. C., immediately after January 12, 1900, and on May 29, 1900, the Assistant Commissioner returned the map to the Register and Receiver at Minot with instructions that the map should be *amended* by describing in the certificate of the Engineer and affidavit of the President the connection of the station grounds with the corner of the public survey. The same letter states that there was then on file in the General Land Office a plat approved July 10, 1899, of other station grounds in the particular ten mile section of road, and advised that if the plat under consideration was intended as an amended location, it would be necessary to so designate it, and to accompany it with a relinquishment of all rights under the former approval. He directed the Register and Receiver to return the plat to the company and added: "The Company will be allowed a reasonable time in which to amend and refile the plat." Corrections as indicated were made and returned to the local land office at Minot, N. D., July 18, 1900, accompanied by a relinquishment of the Old Station grounds. This plat as amended was approved October 18, 1900.

10. Under the decision of this court the claim for station grounds having been initiated and a matter of record from January 12, 1900, *pending approval*, was, when approved, superior to any claim initiated after January 12, 1900, and the Welo entry on April 24, 1900, was therefore an absolute nullity.

11. When the Secretary of the Interior approved the plat on Oct. 18, 1900, that was an adjudication that such station grounds were necessary to the railway company for the purpose indicated, and such approval related back to, and the grant attached as of date January 12, 1900, the date of filing the plat.

12. No claim is made by any of the defendants under the Welo entry. Even if we assume that on Oct. 18, 1900, the predecessor of plaintiff had only a grant of the station grounds filed on subject to the existing rights of Welo, inasmuch as Welo relinquished on May 31, 1901, and no other person had acquired any interest in the meantime the land so far as Welo was concerned reverted to the public domain and it should be held, we believe, that the railway company immediately acquired a perfect title as against the United States and all persons who then had no interest in the land.

13. The decision of the Supreme Court is based upon two propositions. (a) The approval of the plat covering the new station grounds made by

the Secretary of the Interior did not vest title in the railroad company; (b) that Pollock, respondents' predecessor in interest, who obtained patent under scrip, had no notice of the claim of the railroad company to the land involved as station grounds; that the respondents purchased from Pollock in good faith without notice and while this was happening the railroad company made no assertion or claim of title.

The facts relied upon to justify the conclusion which we have designated as "a", are that the land officers at Minot, when placing the retiling marks on the plat on July 18, 1900, made the further notation, "The land embraced in this selection is all vacant except E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ section 8, township 155, range 99", and that on October 18, 1900, the Secretary of the Interior approved the plat of station grounds "subject to all valid existing rights." The Supreme Court says that the Secretary of the Interior, by the form of approval made by him, held that the parcels of land described in the notation of the U. S. Land officers at Minot had been segregated from the public domain and were no longer subject to the land grant act of 1875. The court seems to have adopted the theory that the filing of homestead entry and possession thereunder by Welo at the time the amended claim for station grounds was filed on July 18, 1900, rendered such claim nugatory so far as the land here involved is concerned.

This line of reasoning leaves out of account the fact that the act under which the railroad claims

these station grounds provides for the taking thereof even though there may be possessory rights thereto in a third party. In such case the rights of the third party must be acquired by condemnation. (Section 4923 U. S. Comp. St. 1916). The filing made by Welo and his possession simply initiated the proceedings that would ultimately result in vesting title in him upon compliance with the homestead laws, but until then the land remained the property of the United States and subject to disposal by the United States. The land grant act of March 3, 1875, considering the provision for condemnation of possessory rights to which we have called attention, authorizes the disposal for right of way and station grounds of lands that have been entered under the homestead laws. It requires, however, that a claimant under the homestead or pre-emption laws must be compensated for the value of his interest. If a claimant voluntarily abandons his rights, as Welo did in this case, the title of the railroad becomes absolute, the same as it would through condemnation. The court evidently considered certain decisions of this court under other land grant acts as justifying the conclusion reached. Among other cases cited by counsel for respondents are those of—

Whitney v. Taylor, 158 U. S. 85.

Kansas, etc. v. Dunmeyer, 113 U. S. 629.

These cases arose under the Act of July 1, 1862, granting certain sections of the public land in aid

of the construction of a railroad. But section 3 of that act expressly states that the grant is of lands "not sold, reserved or otherwise disposed of by the United States and *to which a pre-emption or homestead claim may not have attached*, at the time the line of said road is definitely fixed." Of course with such a reservation no title would pass as to lands already entered by a settler. The cases relied upon are not in point.

As to the other ground upon which the Supreme Court bases its judgment the facts are that the records of the land office at Minot and of the land department at Washington disclosed that the railroad company had made claim for these station grounds; and that the claim had been approved by the Interior Department "subject to existing rights." If any such rights existed at all they were the possessory rights of Welo which were later abandoned. Pollock and those claiming under him had notice of these facts from the records, and can in no sense be considered bona fide purchasers. There can be no estoppel against the railroad company, and it cannot be deprived of title to this property by the statute of limitations or laches. This court has uniformly so held.

14. The defendants and their predecessor in interest at that time had no interest in the land involved, and such land never having been abandoned by the railway company, there was no way in which they could acquire any title or interest.

15. Pollock acquired no rights under his patent so far as the station grounds involved are concerned, because his alleged rights were initiated about two years after the grant to the railway company became effective, and the fact that his patent contained no reservation so far as station grounds are concerned is immaterial, and of itself means nothing, under repeated decisions of this court.

16. The second filing of the plat for new station grounds was made July 18, 1900, one year and eight days after the survey of the land involved. This has no bearing on the case for two reasons:

1st. The effective filing was January 12, 1900, which was well within the one year period.

2nd. The twelve month limitation for making claims after completion of the survey of the lands in the act of March 3, 1875, relates to claims for right of way proper, and has no application to claims for station grounds. The making of claims for station grounds is governed by the rules and regulations of the Interior Department, and such regulations (12th Land Decisions, Department Interior 422) contain no limitation as to when claims for station grounds shall be made with reference to the public survey.

A certified copy of the entire transcript of record of the case, including the proceedings in the Supreme Court of the State of North Dakota, is

herewith furnished as a part of this application in conformity with rule 37 of this court.

Your petitioner is advised and believes that the judgment of the Supreme Court of North Dakota in said case is erroneous, and that this court should require the said case to be certified to it for its review and determination under and in conformity with section 237 of the Judicial Code as amended by acts of Congress of Dec. 23, 1914, c. 2, and of Sept. 6, 1916, c. 448, sec. 2. That said case was decided in the Supreme Court of the State of North Dakota on the 28th day of May, 1921. For the reasons already stated the said decision should be reviewed by this court.

WHEREFORE, Your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court directed to the Supreme Court of North Dakota, commanding said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Supreme Court of North Dakota in the case therein entitled Great Northern Railway Company, plaintiff and appellant, against Vivian H. Steinke and others, defendants and respondents, to the end that the said case may be reviewed and determined by this court, and that the said judgment of the Supreme Court of North Da-

kota may be reversed, and petitioner have such other relief as may be deemed proper.

Dated July 15th, 1921.

M. L. COUNTRYMAN,
Attorney for Petitioner,
St. Paul, Minnesota.

C. J. MURPHY,
T. A. TONER,
Attorneys for Petitioner,
Grand Forks, North Dakota.

STATE OF NORTH DAKOTA,

County of Grand Forks. ss.

C. J. Murphy being duly sworn, deposes and says that he is one of the attorneys for the petitioner in the action in the foregoing Petition set forth, and that the said petition is true to the best of his knowledge, information and belief. That this petition is made in good faith and not for the purpose of delay.

C. J. MURPHY.

Subscribed and sworn to before me July 15th, 1921.

(SEAL) FRANK KILGORE,
Notary Public, State of North Dakota.

Syllabus.

GREAT NORTHERN RAILWAY COMPANY *v.*
STEINKE ET AL.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF
NORTH DAKOTA.

No. 152. Argued December 5, 1922.—Decided February 19, 1923.

1. The Act of March 3, 1875, granting railroad rights of way and station grounds in the public lands, should receive a more liberal construction than acts making private grants or extensive grants of land to railroads. P. 124.
2. Where a railroad, under this statute, with approval of the Land Department, secured station grounds in lieu of others nearby, previously selected, persons who were without interest in the premises at the time cannot object that the second selection was void because the first one exhausted the right. P. 125.
3. In a suit by a railroad company to quiet its title to lands included in a station-grounds map which was filed, amended and refiled and then approved by the Secretary of the Interior, *held* that this Court could not take judicial notice of the records of the General Land Office to ascertain the nature and extent of the amendment, nor assume that it was insubstantial; and that, in the absence of evidence on the subject, the rights of the railroad could relate back only to the date of refiling. P. 125.
4. Where land embraced in a map duly filed and approved, "subject to all valid existing rights," under the above act, is subject, at the time of filing and approval, to a preliminary homestead entry, the railroad gets a right for station purposes subject only to the qualification that the rights of the homesteader are not to be disturbed without due compensation, and this qualification disappears when the entry is relinquished and canceled, leaving the railroad's rights as complete as if the entry had never existed. P. 126.
5. The title of a railroad to station grounds under the above act of 1875 cannot be affected by the neglect of the local land officers to note the disposal on the plat and tract-book in their office. P. 129.
6. Purchasers of lots laid out on land included in their grantor's entry and patent but adjacent to the right of way of a railroad constructed over the patented subdivision, who know that the railroad claims rights older than those of their grantor, are bound to enquire and chargeable with notice of proceedings recorded in

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the General Land Office, whereby the railroad obtained a senior title to such adjacent land for station purposes, under the Act of 1875, *supra*. P. 131.

So *held*, where the railroad right was not excepted in their grantor's patent and certificate.

7. A grant of land under the Act of 1875 is upon implied condition that it be used for the *quasi* public purposes named in the act, and neither laches of the railroad grantee, nor local statutes of limitation, can invest individuals with any interest in the tract, or a right to use it for private purposes, without the sanction of the United States. P. 132.

183 N. W. 1013, reversed

CERTIORARI to a decree of the Supreme Court of North Dakota affirming a decree of a trial court against the Railway Company in a suit to determine conflicting claims to a parcel of land.

Mr. C. J. Murphy, with whom *Mr. M. L. Countryman* and *Mr. T. A. Toner* were on the brief, for petitioner.

No brief filed for respondents.

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

This is a suit by the Great Northern Railway Company to determine conflicting claims to a small tract of land adjoining its right of way at Springbrook, North Dakota. That company claims the tract under a grant of station grounds made by the United States to the St. Paul, Minneapolis and Manitoba Railway Company, and the defendants claim the same under a patent from the United States to Philander Pollock. The defendants prevailed in the trial court and in the Supreme Court of the State. 183 N. W. 1013. A writ of certiorari brings the case here. 257 U. S. 629.

At a time when the lands in that vicinity were public lands the St. Paul, Minneapolis and Manitoba Railway Company, being duly qualified so to do, sought and se-

cured a right of way through the same under the Act of March 3, 1875, c. 152, 13 Stat. 482, and constructed its road within and along such right of way. At the same time and in the same way it sought and secured certain lands two miles east of the present site of Springbrook for station grounds. Afterwards it changed its station to a point adjacent to such site and proceeded to give up the original station grounds and to select others, including the tract in controversy, in their stead. It made the requisite survey of the new grounds, prepared a map thereof and on January 12, 1900, filed the map in the local land office, whence it was to be transmitted to the General Land Office and laid before the Secretary of the Interior. The map was returned to the Company for amendment in particulars not shown in the record, was amended accordingly, and on July 18, 1900, was refiled in the local land office. The local officers then transmitted it to the General Land Office, and on October 18, 1900, the Secretary of the Interior approved it "subject to all valid existing rights." On being advised of the Secretary's approval, the local officers should have noted the disposal on the township plat and tract book in their office, but this was not done. The approved map and all papers relating thereto were preserved in the General Land Office in the usual way, and a certified copy of the map and of some of the papers was produced in evidence at the trial.

On January 12, 1900, when the map was first filed in the local land office, the tract in question was public land and free from any claim, but before July 18, 1900, when the map was refiled, the tract was included, with other land, in a preliminary homestead entry made by John Welo. That entry remained intact until May 13, 1901, and was then relinquished by Welo and canceled. On August 19, 1902, the tract was included, with other land, in a preliminary homestead entry made by Philander Pollock, and on June 1, 1903, he released the forty-acre subdivision con-

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taining this tract from that entry and made another and unrelated entry of the same subdivision. Under the latter entry a patent for the full subdivision was issued to him on February 28, 1906.

Pollock and others, whom he interested in the project, platted the greater part of the forty-acre subdivision, including the tract in question, as a townsite. The defendants purchased from them some of the lots, which, as platted, cover part of this tract.

The station grounds shown on the map approved by the Secretary of the Interior consist of a long strip of land one hundred feet wide extending along one side of the right of way at Springbrook. The tract in question is part of that strip and is in close proximity to the tracks and depot.

The rights of the St. Paul, Minneapolis & Manitoba Railway Company in the road, right of way, station grounds, etc., passed to the plaintiff, the Great Northern Railway Company, in 1907.

The Supreme Court of the State, in rejecting the plaintiff's claim under the grant of station grounds and sustaining the defendants' claim under the patent to Pollock, put its decision on two independent grounds. One was that when the map was refiled in the local land office, and when it was approved by the Secretary of the Interior, the tract in question was included in Welo's preliminary homestead entry, and therefore was not subject to disposal under the Act of 1875, and that the Secretary excluded it from his approval by making the latter "subject to all valid existing rights." The other was that thereafter the land officers permitted Pollock to make an entry of the forty-acre subdivision containing this tract, issued to him a certificate of final entry making no reference to the railroad company's claim and gave him a patent purporting to cover the entire subdivision, and that the defendants purchased from Pollock in good faith relying on the final certificate and patent so issued to him.

The pertinent provisions of the Act of 1875 are as follows:

"That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road; also the right to take, from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station-buildings, depots, machine shops, side-tracks, turn-outs, and water-stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road."

"Sec. 3. That the legislature of the proper Territory may provide for the manner in which private lands and possessory claims on the public lands of the United States may be condemned; and where such provision shall not have been made, such condemnation may be made in accordance with section three of the act entitled [an act to amend an act entitled] 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July first, eighteen hundred and sixty-two,' approved July second, eighteen hundred and sixty-four.

"Sec. 4. That any railroad-company desiring to secure the benefits of this act, shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by

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the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: *Provided*, That if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road.

"Sec. 5. That this act shall not apply to any lands within the limits of any military, park, or Indian reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty-stipulation or by act of Congress heretofore passed."

As with other public land laws, the Secretary of the Interior was empowered to prescribe regulations for carrying the act into effect. Such regulations were prescribed. Those in force at the times to which the controversy relates were promulgated November 4, 1898. 27 L. D. 663.

In some respects the act was loosely drafted, but through a long course of administration in the land department and many adjudications in the courts its meaning and effect have come to be pretty well settled. Its purpose was to enhance the value and hasten the settlement of the public lands by inviting and encouraging the construction and operation of needed and convenient lines of railroad through them. Nothing was granted for private use or disposal, nor beyond what Congress deemed reasonably essential, presently or prospectively, for the *quasi* public uses indicated. Because of this, the act has been regarded as requiring a more liberal construction than is accorded to private grants or to the extensive land grants formerly made to some of the railroads. *United States v. Denver & Rio Grande Ry. Co.*, 150 U. S. 1, 8,

14. And see *Kindred v. Union Pacific R. R. Co.*, 225 U. S. 582, 596; *Nadeau v. Union Pacific R. R. Co.*, 253 U. S. 442, 444. There is no provision in the act for the issue of a patent, but this does not detract from the efficacy of the grant. The approved map is intended to be the equivalent of a patent defining the grant conformably to the intendment of the act, *Noble v. Union River Logging R. R. Co.*, 147 U. S. 165, and to relate back, as against intervening claims, to the date when the map was filed in the local land office for transmission through the General Land Office to the Secretary of the Interior. *Stalker v. Oregon Short Line R. R. Co.*, 225 U. S. 142.

In the state court the defendants sought to make the point that when the company secured the station grounds two miles east of the present site of Springbrook it exhausted its right under the act and therefore could not select or take the new grounds. But the point is without merit. The company did not try to hold the original grounds and also to secure the new ones. As shown by the map, it surrendered the former and sought the latter in their stead. By approving the map the Secretary of the Interior assented to the change,—presumably because it appeared to be one which would subserve the interests of the public as well as those of the company. It was the practice of the land department to permit such changes. As the United States found no ground for objecting, others who had no interest in the premises at the time are not in a position to complain. *Washington & Idaho R. R. Co. v. Coeur d'Alene Ry. & Nav. Co.*, 160 U. S. 77, 97-98.

The railway company contends that its rights under the approved map relate back to the time when the map was first filed in the local land office rather than to the time of the refiling; and, in furtherance of the contention, the company asks that we take judicial notice of the files in the General Land Office, which it says will show that

the amendments made in the map between the filing and refiled were so unsubstantial that there was no real alteration. But we think the files in such a proceeding are not within the range of judicial notice and that if there was any purpose to rely on them in this connection they, or a certified copy of them, should have been produced in evidence at the trial. It cannot be merely assumed that the amendments were immaterial, and, in the absence of any proof of their nature and extent, the date of refiled, which was after they were made, must be taken as the time to which rights under the approved map relate.

We have seen that when the map was refiled, and when it was approved, the tract in question was included in Welo's preliminary homestead entry. The Supreme Court of the State thought this prevented any right in the tract from passing to the company under the approved map, and that the words, "subject to all valid existing rights," were inserted in the approval to show the tract was excluded. We reach a different conclusion.

The words quoted were not peculiar to this map, but were commonly inserted in the approvals of that period. Their office was not to show that any of the land designated on the map was excluded from the grant, but to direct attention to what under the act would be true without them,—namely, that the grant was to be effective as against the United States, but was not to impair valid existing claims of settlers or others, and that to make the grant effective against such claimants their rights should be extinguished through private negotiations or, if need be, through condemnation proceedings. See § 3 before quoted and § 2288, Rev. Stats.

That Welo had a valid existing right in virtue of his preliminary entry must be conceded. But it was only an inchoate right to acquire the title by residing on the land and otherwise complying with the homestead law for a

prescribed period. The title and real ownership were in the United States. Welo was under no obligation to perfect his claim. He could abandon it or relinquish it, but could not transfer it to another. Subject only to his claim the approved map vested in the company a complete right to the tract for station purposes. He voluntarily relinquished his entry and thus put an end to his claim. Nothing then stood in the way of the company's right. It was as if Welo's claim never had existed.

Unlike the land grants considered in cases like *Kansas Pacific Ry. Co. v. Dunmeyer*, 113 U. S. 629, 639, and *Hastings & Dakota R. R. Co. v. Whitney*, 132 U. S. 357, 361, the Act of 1875 contains no provision whereby lands covered by homestead or similar claims when the grant attaches are excluded from it. On the contrary, a survey of all that the act does contain shows that the grant is intended to include lands of that class, but with the qualification, plainly implied in the third section, that due compensation must be made to the claimants for their inchoate or possessory rights to make the grant operative against them. *Washington & Idaho R. R. Co. v. Osborn*, 160 U. S. 103, 109. An abandonment of the claims relieves the grant of the qualification. On this question the decisions have been very plain. It was before the Supreme Court of North Dakota in *Jamestown & Northern R. R. Co. v. Jones*, 7 N. Dak. 619, which related to a right of way over which the railroad was constructed in advance of the filing and approval of the map. The part in controversy was included in an existing preemption claim when the road was constructed and also when the map was filed and approved. Afterwards the preemption claim was abandoned. Thereupon another claimant, who had settled on the land after the construction of the road and before the filing or approval of the map, made an entry of the same tract and received a patent,—the entry papers and patent containing no exception of the right of

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way. Two points were involved. One was whether the grant of the right of way attached as of the date when the road was constructed or as of the time when the map was filed or approved; and the other was whether the preëmption claim which was in existence at all of these times operated to except the land from the grant. The decision on the latter point is shown in the following excerpt from the opinion:

"When the act of 1875 is construed as a whole, we believe that, as against the United States, the right-of-way is transferred, even when the land has been entered at the time the map is approved, and that, if such entry is subsequently abandoned or set aside, the grantee will enjoy an absolute easement in the land. The rights of the railroad company will be subject to all rights which have attached to the land before the filing and approval of the map of definite location. But, as against the United States, the grant is as effective in cases where the land has been entered as where it has not. Under any other view of the statute, the railroad company might be compelled to condemn successive rights of settlers, only to find that all its proceedings were futile, because in each case the settler's rights were, by cancellation or abandonment, destroyed. We think that it was the purpose of congress to make the grant operative as against the government, subject only to existing rights of settlers, and that the question whether a particular piece of land was within the terms of the grant, so far as the government was concerned, was not to depend upon the freedom of that land from settlement at the time the map was approved. Under this view of the statute, a railroad company could never be required to condemn any other than existing rights."

Other courts in the public land States have decided the question in the same way. *Hamilton v. Spokane & Palouse R. R. Co.*, 3 Idaho, 164; *Bonner v. Rio Grande*

Southern R. R. Co., 31 Colo. 446; *Alexander v. Kansas City, Ft. Scott & Memphis R. R. Co.*, 138 Mo. 464.

The case of *Jamestown & Northern R. R. Co. v. Jones* was brought here on writ of error and the railroad company's claim to the right of way was upheld,—the decision of the Supreme Court of North Dakota being disapproved as respects the time as of which the grant attached and sustained as respects the effect of the preëmption claim which was in existence at that time and afterwards abandoned. 177 U. S. 125. The opinion in the present case does not refer to that case, and we assume it was overlooked. Otherwise it doubtless would have been followed, as it should have been.

We come, then, to the ruling that the defendants purchased from Pollock in good faith relying on the certificate and patent issued to him, and so are entitled to prevail.

The claim on which Pollock received the certificate and patent was initiated more than two years after the new station grounds passed to the company under the approved map. True, the local land officers neglected to note that disposal on the township plat and tract book in their office; but this did not prejudice or affect the company's title. The noting was required by way of continuing a practice, which had long prevailed, of making the township plats and tract books in the land office of each district a fair and helpful index of all public land transactions in the district. Of course, a faithful adherence to the practice serves to prevent plural and conflicting disposals of the same lands, while a neglect of duty in that regard by the local officers sometimes, as here, results in confusing disposals. But the land department always has ruled that such a neglect of duty affords no justification for subordinating a senior to a junior claim or for making a second disposal in disregard of a prior one. *Edward R. Chase*, 1 L. D. 81; *Goist v. Bottum*, 5 L. D. 643; *Edward Young*,

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9 L. D. 32; *Baird v. Chapman's Heirs*, 10 L. D. 210; *Linville v. Clearwaters*, 11 L. D. 356. In reason the point could not be ruled otherwise, for this would mean that a patent or its equivalent, although issued after full examination of the claim by the Commissioner of the General Land Office and the Secretary of the Interior, could be thwarted or made of no avail by a subsequent omission on the part of the local land officers,—notwithstanding this Court has adjudged that such a conveyance, when regularly issued and recorded in the General Land Office, passes the title and cannot be recalled or canceled by even the Secretary of the Interior. *United States v. Schurz*, 102 U. S. 378. The effect of such omissions often has been considered by this Court and always has been determined along the lines just indicated. It will suffice to refer to two of the cases. In *Van Wyck v. Knevals*, 106 U. S. 360, one party claimed under a land grant to a railroad company and the other under a patent issued on a cash entry. The grant was to attach when the route of the road was definitely fixed, and the Secretary of the Interior was then to withdraw from market all lands falling within the grant. A map definitely fixing the route was filed by the company with the Secretary and was accepted by him, but the intended withdrawal was not sent to the local land office for a half month or more. During that interval the cash entry was allowed and a patent certificate issued thereon. This Court sustained the claim under the grant as being first in time, and, in defining the rights which the company acquired through the filing and acceptance of the map, said, p. 367: "No further action is required of the company to establish the route. It then became the duty of the Secretary to withdraw the lands granted from market. But if he should neglect this duty, the neglect would not impair the rights of the company, however prejudicial it might prove to others." In *Stalker v. Oregon Short Line R. R. Co.*, 225 U. S. 142, the railroad

company was relying on a grant of station grounds under the Act of 1875, which the local land officers neglected to note on their records, and the other party was claiming under a patent issued on a preëmption claim. The Supreme Court of Idaho had sustained the claim of the railroad company because the map of the station grounds was filed in the local land office before the preëmption claim was initiated, 14 Idaho, 371, and that decision was affirmed by this Court on the following grounds, p. 153: "First, if we are right in holding that the grant vested in the company when the plat was approved, as of the date when filed, the failure of the officer in the district land office to properly mark the [township] plat could not operate to defeat the grant; and, secondly, the railroad company having done everything which it was required by law to do, should not be affected by the negligence of the register in not doing a duty upon which the vesting of title as against the United States did not depend." And also, p. 154: "We therefore conclude that the subsequent issue of a patent to the land entered by Reed [the pre-emptor] was subject to the rights of the railroad company theretofore acquired by approval of its station ground map. The patent is not an adjudication concluding the paramount right of the company, but insofar as it included lands validly acquired theretofore, was in violation of law, and inoperative to pass title."

When Pollock initiated his claim to the forty-acre subdivision, which includes the tract in question, the railroad was constructed and being operated across that subdivision, and this was true when the defendants purchased from him. Besides, the defendants understood, as did the community in general, that the company was not claiming under Pollock and that its rights, whatever they were, were older than his. These circumstances should have put the defendants on inquiry respecting the nature and extent of the company's claim and should have prompted

them to make the inquiry with particular regard to the situation before Pollock's claim was initiated,—when the subdivision was public land. So far as appears they made no inquiry, but relied on the absence of any excepting clause in Pollock's certificate and patent, neither of which could bind the company or affect its prior rights. Among other sources of information they could have interrogated the company or its agent who was close at hand, but this was not done. In short they neglected the warning which inhered in the circumstances we have recited. The Act of 1875 was a public statute applicable to public lands in that region and some notice should have been taken of it. We have seen that it made provision for acquiring a general right of way of a uniform width and for securing additional grounds for various station purposes,—such grounds being in the nature of local extensions of the general right of way. A complete record of the company's proceedings under that act was kept in the usual way in the General Land Office, and it is reasonably certain that the defendants would have learned of those proceedings had they heeded the promptings of the situation in which they purchased. They therefore were chargeable with notice of those proceedings. *Brush v. Ware*, 15 Pet. 93, 111.

The defendants interposed the defense of laches and also a local statute of limitations, but the Supreme Court of the State did not rule on either. Neither was applicable to the case. The tract in question was not granted for private use or disposal, but only for the *quasi* public uses named in the act. In other words, the company received the tract on the implied condition that it be devoted to those uses. A breach of the condition subjects the grant to a forfeiture by the United States; but neither laches on the part of the company nor any local statute of limitations can invest individuals with any interest in the tract, or with a right to use it for private purposes,

without the sanction of the United States. *Northern Pacific R. R. Co. v. Smith*, 171 U. S. 260, 275; *Northern Pacific Ry. Co. v. Townsend*, 190 U. S. 267; *Northern Pacific Ry. Co. v. Ely*, 197 U. S. 1; *Kindred v. Union Pacific R. R. Co.*, 225 U. S. 582, 597; *Stuart v. Union Pacific R. R. Co.*, 227 U. S. 342, 353.

It follows that the judgment should have been for the company instead of for the defendants.

Judgment reversed.